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ANNUAL INDEX - DIGEST

DECISIONS AND OPINIONS

of the

UNITED STATES DEPARTMENT OF THE INTERIOR

and

CUMULATIVE INDEX TO SUITS FOR JUDICIAL REVIEW OF DEPARTMENTAL DECISIONS BOTH PUBLISHED AND UNPUBLISHED

WASHINGTON 25, D. C.

JANUARY-DECEMBER 1963

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UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON 25 D. C.

Frank J. Barry, Solicitor

ANNUAL INDEX-DIGEST
JANUARY-DECEMBER 1963

This index-digest covers all the published and all the important unpublished decisions and opinions of the Department of the Interior for the period from January 1 through December 31, 1963. It supersedes the index-digest for January-September 1963.

Decisions and opinions cited as appearing in 70 I. D. are published and copies may be obtained by subscription from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C. Other decisions and opinions are unpublished and copies may be obtained from the Office of the Solicitor.

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SYMBOLS

A	-	Appeal from Bureau of Land Management
CA	-	Contract Appeal
IA	-	Indian Appeal
IBCA	-	Interior Board of Contract Appeals
M	-	Solicitor's Opinion
T	-	Tort Claim
T-(Ir.)	-	Tort Claim - Irrigation
TA	-	Tort Appeal
TA-(Ir.)	-	Tort Appeal - Irrigation

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Max Barash, The Texas Company, 63 I.D. 51 (1956)

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Bay Construction Co., Inc., et al., IBCA 77 (November 30, 1960)

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Sam Bergesen, 62 I.D. 295
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The California Company, 66 I.D. 54 (1959)

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C. F. Lytle Co., IBCA-172 (September 30, 1958)

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Henry J. Ernst, A-27196 (November 7, 1955)

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Gabbs Exploration Co., 67 I.D. 160 (1960)

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Stanley Garthofner, Duvall Brothers, 67 I.D. 4 (1960)

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General Excavating Co., 67 I.D. 344 (1960)

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Duncan Miller, A-27620 (July 23, 1953)

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New York State Natural Gas Corp., A-28687 (July 19, 1962)

Jacob N. Wasserman v. Stewart L. Udall, Civil Action No. 3207-62. Suit pending.

Leonard E. Noren, A-27583 (September 13, 1960)

Leonard E. Noren v. Walter E. Beck, Civil Action No. 2139 ND, in the United States District Court for the Southern District of California. Judgment for the defendant.

Leonard E. Noren v. Walter E. Beck, Civil Action No. 2347 ND, in the United States District Court for the Southern District of California. Suit pending.

Richard L. Oelschlaeger, 67 I.D. 237 (1960)

Richard L. Oelschlaeger v. Stewart L. Udall, Civil Action No. 4181-60. Dismissed, November 15, 1963.

Oil and Gas Leasing on Lands Withdrawn by Executive Orders for Indian Purposes in Alaska, 70 I.D. 166 (1963)

Mrs. Louise A. Pease v. Stewart L. Udall, Civil Action No. 760-63, United States District Court for the District of Alaska at Anchorage. Withdrawn April 18, 1963.

Superior Oil Co., v. Robert L. Bennett, Civil Action No. A-17-63, United States District Court for the District of Alaska at Anchorage. Dismissed, April 23, 1963.

Native Village of Tyonek v. Robert L. Bennett, Civil Action No. A-15-63, United States District Court for the District of Alaska at Anchorage. Dismissed, October 11, 1963.

Mrs. Louise A. Pease v. Stewart L. Udall, Civil Action No. A-20-63, United States District Court for the District of Alaska at Anchorage. Dismissed October 29, 1963 (Oral opinion). Appeal filed, 9th Cir.

George L. Gucker v. Stewart L. Udall, Civil Action No. A-39-63, United States District Court for the District of Alaska at Anchorage. Suit pending.

Eugene C. Paine et al., A-27632 (August 21, 1958)

Eugene C. Paine et al. v. Stewart L. Udall, Civil Action No. 2607-58. Judgment for plaintiff, September 24, 1959. Vacated and remanded, Wright v. Seaton, Misc. 1403, January 11, 1960. Judgment for plaintiff, May 4, 1960. Reversed and remanded, February 23, 1961. Judgment for defendant, March 20, 1961.

Pan American Petroleum Corp., IA-840 (December 18, 1959)

Pan American Petroleum Corp. v. Stewart L. Udall, Civil Action No. 960-60. Judgment for plaintiff, 192 F. Supp. 626 (1961). Subsequent administrative appeal and motion for leave to file supp. Complaint pending.

Paul Jarvis, Inc., 64 I.D. 285 (1957)

Paul Jarvis, Inc. v. United States, Court of Claims No. 40-58. Stipulated judgment for plaintiff, December 19, 1958.

M. Blaine Peterson, A-28111 (November 23, 1959)

L. Robert Anderson v. Stewart L. Udall, Civil Action No. 3953-60. Dismissed without prejudice, November 13, 1961.

Petroleum Ownership Map Co., IBCA-110 (May 29, 1958)

Petroleum Ownership Map Co. v. United States, Court of Claims No. 269-62. Suit pending.

Harold Ladd Pierce, 69 I.D. 14 (1962)

Duncan Miller v. Stewart L. Udall, Civil Action No. 1351-62. Judgment for defendant, August 2, 1962. Affirmed, 317 F. 2d 573 (1963).

Platte Valley Construction Co., IBCA 168 (August 28, 1958)

George Stanek, et al., v. United States, Court of Claims No. 189-62. Suit pending.

John M. Pomeroy, A-28134 (January 13, 1960)

John M. Pomeroy v. Walter E. Beck, Civil Action No. 8033, in the United States District Court for the Northern District of California. Stipulation of dismissal filed, August 15, 1961.

Jensen-Rasmussen, et al., IBCA-363 (March 14, 1963)

Jensen-Rasmussen & Co., v. United States, Civil Action No. 5963, United States District Court for the Western District of Washington, Northern Division. Suit pending.

Richfield Oil Corporation, 62 I.D. 269 (1955)

Richfield Oil Corporation v. Fred A. Seaton, Civil Action No 3820-55. Dismissed without prejudice, March 6, 1958. No appeal.

Evelyn R. Robertson, et al., Duncan Miller, A-29251 (March 21, 1963)

Duncan Miller v. Stewart L. Udall, Civil Action No. 1066-63. Suit pending.

M. C. Wells v. Stewart L. Udall, Civil Action No. A-37-63, United States District Court for the District of Alaska at Anchorage. Suit pending.

Evelyn R. Robertson v. Stewart L. Udall, Civil Action No. 1561-63. Suit pending.

Estate of James Running Horse, IA-1048 (May 26, 1960)

Mary Hit Him Running Horse v. Stewart L. Udall, Civil Action No. 2106-62. Judgment for plaintiff, 211 F. Supp. 586 (1962). No appeal.

Louise Safarik, A-28307 et al. (April 22, 1960)

John J. King v. Stewart L. Udall, Civil Action No. 3903-60. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962).

Louise Safarik et al., A-28562 et al. (January 26, 1961)

Louise Safarik v. Stewart L. Udall, Civil Action No. 1081-61. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962). Cert. den., 371 U.S. 901.

Samuel Gary v. Stewart L. Udall, Civil Action No. 1202-61. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962).

San Carlos Mineral Strip, 69 I.D. 195 (1962)

James Houston Bowman v. Stewart L. Udall, Civil Action No. 105-63. Suit pending.

Casper Joseph Schmand, Attorney in fact for Mike Swab, A-29451 (August 19, 1963)

Casper Joseph Schmand v. Stewart L. Udall, Civil Action No. 63-484, United States District Court for the District of Oregon. Suit pending.

Ann D. Schmidt, A-28349 (July 28, 1960)

Ann D. Schmidt v. Stewart L. Udall, Civil Action No. 3912-60. Judgment for defendant, April 11, 1961; no appeal.

Joseph M. Schuck, A-28603 (August 16, 1961)

Joseph M. Schuck v. Secretary of the Interior, No. 16,632. Petition for review dismissed, December 15, 1961. No appeal.

Joseph M. Schuck v. Secretary of the Interior, Civil Action No. 1402 Tucson, in the United States District Court for the District of Arizona. Complaint dismissed, January 30, 1962. No appeal.

Joseph M. Schuck v. Roy T. Helmandollar, Civil Action No. 1402 Tucson, in the United States District Court for the District of Arizona. Judgment for defendant, March 19, 1962. No appeal.

Seal and Company, 68 I.D. 94 (1961)

Seal and Company, Inc. v. United States, Court of Claims No. 274-62. Suit pending.

Stanley C. Soho, A-28135, (August 19, 1959)
A-28135 Supp. (July 17, 1961)

Robert V. Ferry & Irving Baker v. Stewart L. Udall, Civil Action No. 1643 Tuc., United States District Court for the District of Arizona. Judgment for the defendant September 3, 1963. Appeal taken, 9th Cir.

Stanley C. Soho et al., A-28175 (April 11, 1960)

Albert Meeks v. E. I. Rowland, Civil No. 3461-Phx., in the United States District Court for the District of Arizona. Case dismissed, January 17, 1961. No appeal.

James K. Tallman, 68 I.D. 256 (1961)

James K. Tallman et al. v. Stewart L. Udall, Civil Action No. 1852-62. Judgment for defendant, November 1, 1962 (opinion). Reversed, 324 F. 2d 411 (1963). Petition for rehearing denied, October 16, 1963.

J. A. Terteling & Sons, Inc., 64 I.D. 466 (1957)

J.A. Terteling & Sons, Inc., v. United States, Court of Claims No. 114-59. Suit pending.

Texas Construction Co., 64 I.D. 97 (1957)
Reconsideration denied, IBCA-73 (June 18, 1957)

Texas Construction Co. v. United States, Court of Claims No. 224-58. Stipulated judgment for plaintiff, December 14, 1961.

Estate of John Thomas, Deceased Cayuse Allottee No. 223 and Estate of Joseph Thomas, Deceased Umatilla Allottee No. 877, 64 I.D. 401 (1957)

Joe Hayes v. Fred A. Seaton, Secretary of the Interior, Civil Action No. 859-581.

On September 18, 1958, the court entered an order granting defendant's motion for judgment on the pleadings or for summary judgment. The plaintiffs appealed and on July 9, 1959, the decision of the District Court was affirmed, and on October 5, 1959, petition for rehearing en banc was denied, 270 F. 2d 319. A petition for a writ of certiorari was filed January 28, 1960, in the Supreme Court. The petition was denied on October 10, 1960, rehearing denied November 21, 1960.

Thor-Westcliffe Development, Inc., 70 I.D. 134 (1963)

Thor-Westcliffe Development, Inc., v. Stewart L. Udall, Civil Action No. 5343, United States District Court for the District of New Mexico. Dismissed with prejudice June 25, 1963.

See also:

Thor-Westcliffe Development, Inc., v. Stewart L. Udall, et al., Civil Action No. 2406-61. Judgment for defendant, March 22, 1962, Affirmed 314 F. 2d 257, Cert. den. 373 U.S. 951.

Richard K. Todd et al., A-28090 et al. (October 30, 1961)

Bert F. Duesing v. Stewart L. Udall, Civil Action No. 290-62. Judgment for defendant, July 17, 1962 (oral opinion). Appeal taken.

Atwood et al. v. Stewart L. Udall, Civil Actions 293-62 - 299-62, incl. Judgment for defendant, August 2, 1962; Appeal taken.

E. B. Todhunter, A-28197 (May 23, 1960)

Victoria L. Cuccia v. Stewart L. Udall, Civil No. 3921-60. Judgment for defendant, September 17, 1963. No appeal.

Tyee Construction Co., IBCA-112 and 113 (April 30, 1958)

Tyee Construction Co. v. United States, Court of Claims No. 312-60. Judgment for defendant, June 1, 1962. No appeal.

Union Oil Company of California, Ramon P. Colvert, 65 I.D. 245 (1958)

Union Oil Company of California v. Stewart L. Udall, Civil Action No. 3042-58. Judgment for defendant, May 2, 1960 (opinion). Affirmed, 289 F. 2d 790 (1961).

United States v. Alonzo A. Adams et al., 64 I.D. 221 (1957)

Alonzo A. Adams et al. v. Paul B. Witmer et al., United States District Court for the Southern District of California, Civil Action No. 1222-57-Y. Complaint dismissed, November 27, 1957 (opinion); reversed and remanded, 271 F. 2d 29 (9th cir. 1958); on rehearing, appeal dismissed as to Witmer; petition for rehearing by Berriman denied, 271 F. 2d 37 (1959).

United States v. Alonzo Adams, United States District Court for the Southern District of California, Civil No. 187-60-WM. Judgment for plaintiff, January 29, 1962 (opinion). Judgment modified, 318 F. 2d 861 (1963).

United States v. Arizona Exploration Co., et al., A-23876 (June 22, 1962)

Blaine J. Lord, et al. v. Roy T. Helmandollar, et al., Civil Action No. 987-63. Judgment for defendants, September 30, 1963. No appeal.

United States v. R. B. Borders, A-28624 (October 23, 1961)

J. R. Osborne v. Harold C. Hammitt, Civil No. 414, in the United States District Court for the District of Nevada. Suit pending.

United States v. Nick Chournos, A-28577 (July 14, 1961)

Nick Chournos v. United States, Civil Action No. C164-61, United States District Court for the District of Utah. Complaint Dismissed, January 9, 1962; no appeal.

Nick Chournos et al., v. United States et al., Civil Action No. C-238-62, United States District Court for the District of Utah. Dismissed, June 28, 1963.

United States v. Willard Christensen, A-27549 (May 14, 1958)

La Fortuna Uranium Mines, Inc. v. Fred A. Seaton, Civil Action No. 191-59. Judgment for defendant, April 4, 1960. No appeal.

United States v. J. R. Clements, A-27751 (December 15, 1958)

John Raymond Clements v. Fred A. Seaton, Civil Action No. 560-59. Judgment for defendant, January 13, 1960. No appeal.

United States v. Francis Dlouhy et al., A-27668 (September 24, 1958)

Francis H. Dlouhy v. Fred A. Seaton, Civil Action No. 405-59. Judgment for defendant, May 3, 1960. Appeal dismissed, November 28, 1960.

United States v. The Dredge Corporation, A-28022 (December 18, 1959)

The Dredge Corporation v. J. Russell Penny, Civil Action No. 396, in the United States District Court for the District of Nevada. Judgment for defendant, September 25, 1962. Appeal filed, 9th Cir.

United States v. Everett Foster et al., 65 I.D. 1 (1958)

Everett Foster et al. v. Fred A. Seaton, Civil Action No. 344-58. Judgment for defendants, December 5, 1958 (opinion); affirmed, 271 F. 2d 836 (1959).

United States v. Charles H. Henrikson et al., 70 I.D. 212 (1963)

Charles H. Henrikson et al., v. Stewart L. Udall, et al., Civil Action No. 41749, United States District Court for the Northern District of California, Southern Division. Suit pending.

United States v. G. C. (Tom) Mulkern, A-27746 (January 19, 1959)

G. C. (Tom) Mulkern v. James Keough, Civil Action No. 299, in the United States District Court for the District of Nevada. Judgment for defendant, February 19, 1963, (opinion). Appeal filed, 9th cir.

United States v. E. V. Pressentin et al., A-27495 (April 2, 1958)

E. V. Pressentin v. Fred A. Seaton, Civil Action No. 4804, in the United States District Court for the Western District of Washington. Voluntary dismissal by plaintiff entered July 24, 1959.

E. V. Pressentin et al. v. Fred A. Seaton, Civil Action No. 1907-59. Judgment for defendant, January 15, 1960. Reversed and remanded, 284 F. 2d 195 (1960).

United States v. C. F. Pruess, Sr., A-28641 (August 22, 1961)

C. F. Pruess, Sr. v. Stewart L. Udall, Civil Action No. 1331-62. Suit pending.

United States v. Thomas R. Shuck, A-27965 (February 2, 1960)

Thomas R. Shuck v. Roy T. Helmandollar, Civil No. 682 Pct., in the United States District Court for the District of Arizona. Judgment for defendant, December 7, 1961. No appeal.

United States v. Charles E. Stewart, A-28966 (September 25, 1962)

Charles E. Stewart v. Gordon Penny et al., Civil Action No. 1619, United States District Court for the District of Nevada. Suit pending.

United Technical Industries, Inc., A-29406 (April 24, 1963)

Jay Nielson v. J. E. Keough et al., Civil Action No. C-158-63, United States District Court for the District of Utah, Central Division. Suit pending.

E. A. Vaughey, 63 I.D. 85 (1956)

E. A. Vaughey v. Fred A. Seaton, Civil Action No. 1744-56. Dismissed by stipulation, April 18, 1957. No appeal.

Wasatch Development Co., et al., A-28674 (May 16, 1963)

Joseph B. Umpleby et al., v. Stewart L. Udall, Civil Action No. 8156, United States District Court for the District of Colorado. Suit pending.

Weardco Construction Corp., 64 I.D. 376 (1957)

Weardco Construction Corp. v. United States, Civil Action No. 278-59-PH, in the United States District Court for the Southern District of California. Judgment for plaintiff, October 26, 1959. No appeal.

Lucille S. West, Duncan Miller et al., A-29242 et al. (February 25, 1963), Duncan Miller, A-29231 (February 5, 1963)

Cecil H. Phillips et al., v. Stewart L. Udall, Civil Action No. 847-63. Dismissed on behalf of all except Lucille S. West.

Buck Willcoxson, A-27402, A-27403 (December 17, 1956)

Buck Willcoxson v. Douglas Henriques, Civil Action No. 3596, in the United States District Court for the District of New Mexico. Motion of plaintiff to dismiss case without prejudice granted, December 10, 1957.

Buck Willcoxson v. Stewart L. Udall, Civil Action No. 2029-58.

United States v. Buck Willcoxson et al., Civil Action No. 1492-59.

Buck Willcoxson v. United States, Civil Action No. 972-59.

Actions consolidated. Judgment for defendant, plaintiff, and defendant, respectively, August 3, 1961. Affirmed 313 F. 2d 884 (1963). Cert. denied. 373 U.S. 932 (1963).

William A. Smith Contracting Co., Inc., IBCA 83 (July 16, 1959)

William A. Smith Contracting Co., Inc., et al. v. United States, Court of Claims No. 264-57. Judgment for Plaintiff 292 F 2d 847 (1961). No appeal.

William A. Smith Contracting Co., Inc., v. United States, Court of Claims No. 279-59. Judgment for Defendant 292 F 2d 854 (1961).

W. L. Ridge Construction Co., IBCA-80 (November 30, 1960)

W. L. Ridge v. United States, Court of Claims No. 301-60. Suit dismissed, October 1, 1963.

Estate of Wook-Kah-Nah, Comanche Allottee No. 1927, 65 I.D. 436 (1958)

Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah, Deceased, Comanche Enrolled Restricted Indian No. 1927 v. Jane Asenap, Wilfred Tabbytite, J. R. Graves, Examiner of Inheritance, Bureau of Indian Affairs, Department of the Interior of the United States of America, and Earl R. Wiseman, District Director of Internal Revenue, Civil

Action No. 8281, in the United States District Court for the Western District of Oklahoma. The court dismissed the suit as to the Examiner of Inheritance, and the plaintiff dismissed the suit without prejudice as to the other defendants in the case.

Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah v. Stewart L. Udall, Civil Action No. 2595-60. Judgment for defendant, June 5, 1962. Remanded, 312 F. 2d 358 (1962).

* * * * * *

ACCOUNTS

(See also Funds)

PAYMENTS

Where a Departmental regulation requires that the filing fee due in connection with a request for a 5-year extension of an oil and gas lease be paid before a certain date, a check for the filing fee (and rental) filed before, but erroneously dishonored by the drawee bank after, the pertinent date will be held to have been paid within the prescribed time.

Duncan Miller, A-28657 (Mar. 29, 1963)
70 I. D. 113

Where a departmental regulation requires that advance rental be submitted with an offer to lease for oil and gas, a check for the required rental submitted with the offer which is erroneously dishonored by the drawee bank will be held to have been properly filed.

Duncan Miller, A-29278 (May 13, 1963)

ACCRETION

The rights acquired by the United States in the public domain are determined by the common law. Under the common law, as interpreted and applied by the Supreme Court, the United States, wherever it is a littoral or riparian proprietor of public domain, has a vested right to future accretions and relictions. Because of the nature of the Federal system, and by virtue of an express provision of the Constitution, no State can, by legislation or otherwise, deprive the United States of its right to relictions or accretions.

State of Utah, A-29043 (Feb. 18, 1963)
70 I. D. 27

ADDITIONAL HOMESTEADS

Where a special private act renders moot the issue on an appeal from the rejection of an additional homestead application in Alaska, the appeal will be dismissed, the Bureau of Land Management decisions vacated, and the case remanded for further consideration and action in accordance with the provisions of the special act and the homestead laws.

Leo F. Reeves, A-27919 (June 25, 1963)

The requirements as to cultivation of an additional homestead entry may be reduced if the entryman meets with some misfortune which renders him reasonably unable to cultivate the prescribed area in the brief time available for such cultivation.

Sterling E. Whaley, A-29171 (July 18, 1963)

A second application for an additional homestead entry is properly rejected where the applicant previously filed a location notice of settlement and failed to perfect title to the land because of noncompliance with requirements which were called to his attention.

Lawrence M. Lewis, A-29702 (Dec. 10, 1963)

ADMINISTRATIVE PRACTICE

When, subsequent to the filing of a noncompetitive offer to lease for oil and gas, a determination is made that a portion of the lands is thereafter to be considered within the known geologic structure of a producing field, the administrative practice of issuing separate leases for the lands within and without the structure is proper and not in conflict with the mineral leasing laws and regulations.

Nettie M. Lewis, A-28737 (Jan. 31, 1963)
70 I. D. 4

ADMINISTRATIVE PRACTICE--Continued

Where after the approval of assignments of record title to an oil and gas lease a protest is filed by one claiming an interest in the lease and judicial proceedings have been instituted to determine the interests and rights of the parties in the lease, the Department will suspend action on further assignments and requests for permission to drill until the parties resolve the controversy by agreement or by the litigation.

Tom Bolack, A-29223, (Mar. 20, 1963)

An application for patent on a mining claim is properly rejected where, more than sixteen years before the application is filed, the claim was declared null and void and thereafter canceled, and proceedings leading to the cancellation will not be reopened many years after the decision became final in the absence of a compelling legal or equitable basis warranting reopening.

Wasatch Development Co. et al., A-28674 (May 16, 1963)

The Director of the Bureau of Land Management has authority at any time to take up and dispose of any matter pending in a land office or to review any decision of a subordinate officer.

Oscar C. Collins, Standard Oil Company of California, A-29415 (July 15, 1963) 70 I. D. 359

The Director of the Bureau of Land Management may in the absence of an appeal to the Secretary, reconsider a previous decision on his own motion and correct any errors that may have been made in the former decision where the effect of the first decision has been prevented from becoming final by a court injunction which suspended any action taken by the Bureau.

George E. Conley, A-29634 (Oct. 18, 1963)

43 USC., 1958 ed., sec. 226

ADMINISTRATIVE PROCEDURE ACT

DECISIONS

Where the factual findings upon which an examiner's decision are based are stated clearly in a decision, it is not essential that a separate part of the decision be designated "findings of fact."

United States v. Joe Driear, A-28925 (Jan. 31, 1963) 70 I. D. 10

HEARINGS

Where a hearing examiner's decision contains a ruling, in a single sentence, on all of the proposed findings and conclusions submitted by a party to a hearing, and the ruling on each finding and conclusion is clear, there is no requirement that the examiner rule separately as to each of the proposed findings and conclusions individually.

Where the factual findings upon which an examiner's decision are based are stated clearly in a decision, it is not essential that a separate part of the decision be designated "findings of fact."

United States v. Joe Driear, A-28925 (Jan. 31, 1963) 70 I. D. 10

A notice of hearing in a mining contest case which, in effect, incorporates the charges in the complaint that the land within the claim is nonmineral in character and that minerals have not been found within the limits of the claim in sufficient quantities to constitute a valid discovery sufficiently complies with the requirement in section 5 of the Administrative Procedure Act that a notice of hearing state the matters of fact and law asserted.

United States of America v. Pearl Clarke et al., A-29639 (Oct. 17, 1963) 70 I. D. 455

AGENCY

An oil and gas lease offer filed by one acting as an agent for the offeror without an accompanying statement of any possible interest of the agent in the offer or prospective lease as required by the pertinent regulation 43 CFR 192.42(e)(4) earns no priority and must be rejected.

Evelyn R. Robertson et al., Duncan Miller, A-29251 (Mar. 21, 1963)

Where departmental decisions have established that over a period of time an offeror has so authorized another to act for him on a continuing basis in relation to filing oil and gas lease offers that the latter is an agent of the former within the meaning of the pertinent regulation, an offer filed by the offeror during that period as to which the other has described himself as an agent is properly rejected when the offer is filed without an accompanying statement of any possible interest of the agent in the offer or prospective lease as required by regulation 43 CFR 192.42(e)(4).

Charles B. Gonsales, A-29010 (Mar. 27, 1963)

An oil and gas lease extension application is not effective though it is timely filed, when the one filing is an unauthorized agent and his action is not ratified by the lessee until after the expiration of the time allowable for filing of the lease extension application.

Frank and Angela Naporan, A-29420 (June 20, 1963)

Where an attorney in fact or agent of a lessee signs an assignment of an oil and gas lease on behalf of the lessee, evidence must be furnished of the authority of the attorney or agent to execute such an assignment; and the fact that such evidence has been previously furnished in the same land office in connection with another case will not satisfy this requirement if there has been no incorporation in the record of a reference to the case file number in which evidence of the authority is filed.

Charlotte E. Brown et al., A-29667 (Nov. 21, 1963) 70 I. D. 491

ALASKA

GENERALLY

Legislative grants must be construed strictly against the grantee lest they be enlarged to include more than what was intended.

Section 45(a) of the Alaska Omnibus Act permits the transfer of real and personal property to the State, if it is determined that a Federal function has been terminated or curtailed and has been or will be assumed by the State.

The authority of any Commission appointed pursuant to section 46(a) of the Alaska Omnibus Act is limited to the consideration of factual disputes only and such a Commission has no authority to pass upon questions of law or to resolve disputes respecting the proper interpretation of the statute.

Transfer of Real and Personal Properties to the State of Alaska Pursuant to Section 6(e) of the Alaska Statehood Act, M-36648 (Mar. 11, 1963) 70 I. D. 91

COAL LEASES AND PERMITS

An application for a coal prospecting permit under regulations issued pursuant to the act of Oct. 20, 1914, filed after the repeal of that act by the act of Sept. 9, 1959, is subject to rejection because of the cessation of authority of this Department to issue permits under the 1914 act; and, even though the 1959 act extended the provisions of the Mineral Leasing Act of Feb. 25, 1920, to Alaska, the land office did not have any duty or authority to consider the application as one under the 1920 act until some action was taken by the appellant to amend the application to come within that act.

A coal prospecting permit application which conflicts with an approved selection made by the State of Alaska under the Alaska Mental Health Act is properly rejected in favor of the State selection, regardless of which application was first filed.

Cripple Creek Coal Company, A-29564 (Oct. 11, 1963) 70 I. D. 451

ALASKA--Continued

HEADQUARTERS SITES

A headquarters site application will be rejected when it is not based upon settlement prior to the withdrawal of the land from all forms of appropriation under the public land laws and the land has, subsequent to revocation of withdrawal, been classified for sale to another applicant under the act of Aug. 1, 1956, as amended.

Eleanor Helen Wold, A-29562 (Oct. 8, 1963)

HOMESITES

A homesite application in Alaska is properly rejected where the applicant fails to provide a proper description of the land applied for and no notice of location was filed in the proper land office as required to entitle the applicant to credit for residency or occupany prior to filing the application to purchase.

Fred Schellenberg Administrator of the Estate of William J. Parchin, A-29734 (Nov. 1, 1963)

Where an applicant for a homesite files a protest against an application to purchase a headquarter site within 30 days after the publication of the latter application, the protest being based on the assertion that the protestant has a superior right to part of the land included in the headquarter site application, the protest is properly dismissed where the protestant fails, as required by section 10 of the act of May 14, 1898, to commence an action within 60 days in a court of competent jurisdiction to quiet title to the land in conflict.

John Martin Pearson, A-29674 (Dec. 18, 1963)
70 I. D. 523

HOMESTEADS

The breaking, planting or seeding, and tillage for a crop which constitute cultivation of the soil of a homestead entry must include such acts and be done in such manner as to be reasonably calculated to produce profitable. results.

A homestead entry is properly canceled when the final proof submitted by the entryman shows on its face that he did not cultivate 1/16 of the entry in the second year of the entry and 1/8 in the third year and thereafter until final proof was submitted.

Margaret L. Gilbert v. Bob H. Oliphant, A-29163 (Apr. 11, 1963) 70 I.D. 128

ALASKA--Continued

HOMESTEADS--Continued

In order for a homestead entryman on the Kenai Peninsula in Alaska to be entitled to the grant of oil and gas deposits provided for in the act of September 14, 1960, compliance with the requirements of the homestead laws, except for actual submission of final proof, must have been made prior to July 23, 1957, and where the entryman's final proof did not show that one-eighth of the entry was cultivated prior to that time, there was not compliance with all the requirements for patent and the entryman was not entitled to the benefits of the 1960 act.

Wilford S. Jones, A-29320 (May 2, 1963)

An application for a second homestead entry under the act of Sept. 5, 1914, is properly rejected in the absence of sufficient showing that the applicant lost, forfeited, or abandoned the original entry through no fault of his own or because of matters beyond his control.

Kermit A. Dowse, A-29355 (June 7, 1963)

Where a special private act renders moot the issue on an appeal from the rejection of an additional homestead application in Alaska, the appeal will be dismissed, the Bureau of Land Management decisions vacated, and the case remanded for further consideration and action in accordance with the provisions of the special act and the homestead laws.

Leo F. Reeves, A-27919 (June 25, 1963)

Although a World War I veteran having more than 19 months military service credit may file acceptable final proof during the first year of his homestead entry without showing cultivation, if the filing of the final proof is delayed until some time in the second entry year during a cultivable season, the final proof must show that the required cultivation for the second year has been initiated in order to be acceptable.

Homer D. Smith, A-29351 (July 1, 1963)

The act of September 14, 1960, quitclaimed to the patentee all right, title, and interest in oil and gas deposits reserved by the United States in lands in the Kenai Peninsula in Alaska on which all requirements for a homestead patent had been met prior to July 23, 1957, except for submission of acceptable final proof; the act did not affect the mineral reservations to the United

HOMESTEADS--Continued

States in lands which were patented under the homestead laws prior to July 23, 1957.

Oscar C. Collins, Standard Oil Company of California, A-29415 (July 15, 1963) 70 I. D. 359

Where the statutory life of a second homestead entry has expired without the submission of final proof, the Bureau properly issued a notice to the entryman to file final proof within 30 days or to show cause why the entry should not be canceled for failure to make the requisite final proof.

William Dittman, A-29909 (July 18, 1963)

The requirements as to cultivation of an additional homestead entry may be reduced if the entryman meets with some misfortune which renders him reasonably unable to cultivate the prescribed area in the brief time available for such cultivation.

Sterling E. Whaley, A-29171 (July 18, 1963)

Where an applicant for a second homestead entry indicates that he relinquished his first entry just to secure better land and that the land in the entry was too steep and rough for cultivation but he did not know it because the land was covered with snow when he visited it, he did not lose, forfeit, or abandon the first entry because of matters beyond his control so as to entitle him to a second homestead entry and his application is properly rejected.

Orland F. Monasmith, A-29457 (July 24, 1963)

Where a homestead settler on unsurveyed public land in Alaska initiates his homestead claim by settling upon the land while it was subject to the homestead entry of another and subsequently files notice of such settlement in the land office after relinquishment of the prior entry, his rights attach instantly on the filing of the relinquishment of the existing homestead and are superior to the rights of a homestead settler who files his notice of settlement and settles on the land subsequent to the relinquishment.

Ernest J. Ackermann, Clifford V. Young, A-29349 (July 26, 1963) 70 I. D. 378

HOMESTEADS--Continued

This Department is not justified in reducing the area required to be cultivated in a homestead entry in Alaska where the misfortune relied upon to justify a reduction, flooding of the cultivated area at the end of the second year, is not shown to have prevented cultivation during succeeding years of the entry.

Joseph B. Deisher, A-29434 (July 26, 1963)

A tract of land which had been reserved for the use by the Department of Agriculture as an experimental station and then later turned over to the University of Alaska pursuant to Congressional authority is not subject to homestead entry and a homestead application for such lands is properly rejected.

Emma Grace Lowe, A-29554 (July 31, 1963)

A homestead entry in Alaska and any patent issued for it will be impressed with a reservation of oil and gas when the Geological Survey has reported the entered lands to be prospectively valuable for oil and gas before final proof had been filed and proper notice was given by the Bureau of Land Management, in accordance with regulation 43 CFR 102.22(a), as amended, of that fact, and of the entryman's right to apply for a reclassification of the lands, accompanying the request with a showing, or to appeal, and no error is shown by the entryman's appeal from that action, and no request, with a showing, has been filed.

John E. Caston, A-29600 (Aug. 2, 1963)

This Department has no authority to relieve homesteaders of the residence requirements of the homestead laws.

A leave of absence from a settlement claim in Alaska may be granted only if the applicant has established his residence on the claim.

Final proof under a settlement claim in Alaska is not acceptable where it does not show that the homesteader established his residence on the claim within six months after filing his notice of settlement.

Land embraced in a recorded settlement claim in Alaska is not available for homestead entry and

ALASKA--Continued

HOMESTEADS--Continued

an application to make homestead entry on such land must be rejected.

Edwin P. Knapp, Kenneth M. Crockett, A-29913 (Sept. 18, 1963) 70 I.D. 441

A homestead entryman who fails to earn equitable title to his entry before the Geological Survey reports that the land is prospectively valuable for oil and gas is properly required to petition for reclassification of the land as nonmineral in character or, failing to attempt or to obtain a favorable decision on a petition for reclassification, to accept a patent reserving to the United States the oil and gas deposits in the land and the right to develop them.

Clarence G. Beckhorn, A-29439 (Sept. 19, 1963)

An application for a second homestead entry under the act of Sept. 5, 1914, is properly rejected in the absence of a sufficient showing that the applicant lost, forfeited, or abandoned the original entry through no fault of his own or because of matters beyond his control.

John E. Schulz, A-29552 (Sept. 25, 1963)

Where an appeal is taken from the rejection of a homestead application for the reason that a State selection has precedence and the State later states that the selection was not intended to apply to land in the status of that included in the homestead application, the appeal becomes moot and the case will be remanded for further consideration of the homestead application.

Norman A. Twitty, A-30016 (Sept. 26, 1963)

Although the rights of a homestead settler on public lands covered by an existing entry attach instantly on the relinquishment of the prior entry and are superior to those of settlers or applicants initiating their rights later, such a settlement is nevertheless subject to the superior right of a contestant who secures the cancellation of the entry.

ALASKA--Continued

HOMESTEADS--Continued

An allegation in a private contest complaint filed immediately after the end of the second entry year which charges that the entryman failed to have under cultivation 1/16 of the acreage meets the requirements of the regulation that a contest complaint must allege in clear and concise language the facts which constitute the grounds for the contest.

Charles Lewellen, A-29644 (Nov. 5, 1963) 70 I.D. 475

INDIAN AND NATIVE AFFAIRS

Lands in Alaska which have been withdrawn by Executive order for Indian purposes or for the use and occupancy of any Indians or tribe, may be leased for oil and gas development pursuant to the act of Mar. 3, 1927.

Oil and Gas Leasing on Lands Withdrawn by Executive Order for Indian Purposes in Alaska, M-36652 (May 14, 1963) 70 I.D. 166

The Annette Islands reserve in Alaska was specifically created as an Indian reservation by section 15 of the Act of March 3, 1891 (26 Stat. 1101; 48 U.S.C. sec. 358), and is leasable for mining purposes under the provisions of the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. sec. 396a-f).

Proposed Lease of Annette Islands Reserve for Metalliferous Mining, M-36658 (July 19, 1963) 70 I.D. 363

LAND GRANTS AND SELECTIONS

Where an appeal is taken from the rejection of a homestead application for the reason that a State selection has precedence and the State later states that the selection was not intended to apply to land in the status of that included in the homestead application, the appeal becomes moot and the case will be remanded for further consideration of the homestead application.

Norman A. Twitty, A-30016 (Sept. 26, 1963)

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

An application for a coal prospecting permit under regulations issued pursuant to the act of Oct. 20, 1914, filed after the repeal of that act by the act of Sept. 9, 1959, is subject to rejection because of the cessation of authority of this Department to issue permits under the 1914 act; and, even though the 1959 act extended the provisions of the Mineral Leasing Act of Feb. 25, 1920, to Alaska, the land office did not have any duty or authority to consider the application as one under the 1920 act until some action was taken by the appellant to amend the application to come within that act.

An application by the State to select lands under the Mental Health Act is not defective because it does not contain a showing as to the situation and potential uses of the selected lands.

A coal prospecting permit application which conflicts with an approved selection made by the State of Alaska under the Alaska Mental Health Act is properly rejected in favor of the State selection, regardless of which application was first filed.

Cripple Creek Coal Company, A-29564 (Oct. 11, 1963) 70 I. D. 451

MINERAL LEASES AND PERMITS

The Annette Islands reserve in Alaska was specifically created as an Indian reservation by section 15 of the Act of March 3, 1891 (26 Stat. 1101; 48 U.S.C. sec. 358), and is leasable for mining purposes under the provisions of the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. sec. 396a-f).

Proposed Lease of Annette Islands Reserve for Metalliferous Mining, M-36658 (July 19, 1963) 70 I. D. 363

An application for a coal prospecting permit under regulations issued pursuant to the act of Oct. 20, 1914, filed after the repeal of that act by the act of Sept. 9, 1959, is subject to rejection because of the cessation of authority of this Department to issue permits under the 1914 act; and, even though the 1959 act extended the provisions of the Mineral Leasing Act of February 25, 1920, to Alaska, the land office did not have any duty or authority to consider the application as one under the 1920 act until some action was taken by the appellant to amend the application to come within that act.

Cripple Creek Coal Company, A-29564 (Oct. 11, 1963) 70 I. D. 451

ALASKA--Continued

OIL AND GAS LEASES

The language and legislative history of the act of Mar. 3, 1927, together with the avowed purpose of establishing a uniform policy for leasing all Executive order reservations for Indian purposes, compel the conclusion that the 1927 act is applicable to lands in Alaska.

Lands in the Tyonek Reserve (Moquawkie Reservation) in Alaska which were ". . . withdrawn from disposal, and reserved for the U.S. Bureau of Education * * *" by Executive Order No. 2141, Feb. 27, 1915, were "* * * withdrawn for Indian purposes or for the use and occupancy of * * * Indians * * *" within the meaning of the act of Mar. 3, 1927.

Oil and Gas Leasing on Lands Withdrawn by Executive Order for Indian Purposes in Alaska, M-36652 (May 14, 1963) 70 I. D. 166

When an oil and gas lease offer for land in Alaska does not conform with a regulation which specifies that unsurveyed land be described by metes and bounds and be tied to a corner of the public land survey, the application must be rejected.

Estate of H. Roland Glaisyer Albert Stevenson, Administrator, A-29448 (July 24, 1963)

POSSESSORY RIGHTS

Public land in Alaska which has been withdrawn from settlement, location, sale, and entry and reserved for classification, subject to valid existing rights, is not available for lease or sale under the Small Tract Act, even to an applicant who alleges he built a cabin on a tract of land prior to its withdrawal, since no rights can be acquired under the Small Tract Act by building improvements or occupying the land prior to any authorization to do so; however, a valid claim under any of the appropriate settlement acts in Alaska initiated prior to the withdrawal would not be affected by it.

Robert Hoopes, A-29676 (Nov. 13, 1963)

Where an applicant for a homesite files a protest against an application to purchase a headquarter site within 30 days after the publication of the latter application, the protest being based on the assertion that the protestant has a superior right to part of the land included in the headquarter site application, the protest is properly dismissed where the protestant fails, as required by section 10 of the act of May 14, 1898, to commence an action within 60 days in a court of compete jurisdiction to quiet title to the land in conflict.

John Martin Pearson, A-29674 (Dec. 18, 1963) 70 I. D. 523

ALASKA--Continued

STATEHOOD ACT

The legislative history of section 6(e) of the act of July 7, 1958, clearly indicates that Congress intended to limit the application of section 6(e) to transfers of property, real and personal, which has been used solely for the purposes of conserving and protecting Alaskan fisheries and wildlife under the provisions of the State laws cited in the act.

Transfer of Real and Personal Properties to the State of Alaska Pursuant to Section 6(e) of the Alaska Statehood Act, M-36648 (Mar. 11, 1963) 70 I. D. 91

TRADE AND MANUFACTURING SITES

A notice of the location of a trade and manufacturing site which amends an earlier notice by adding additional land to the site is subject to the same time limitation as the notice which it amends so that a single period of time for perfection of the locator's rights and the filing of an application to purchase the amended site is thereby created.

Russell D. Lapham, A-29094 (Jan. 11, 1963)

UNIVERSITY OF ALASKA GRANT

Under the Department's regulations relating to grants to the State of Alaska, an oil and gas lease offer must be rejected when approval is given to a subsequently filed selection of land for the University of Alaska.

Violet Goresen et al., A-29268 (Apr. 24, 1963)

APPLICATIONS AND ENTRIES

GENERALLY

A land office employee has no authority or duty to alter an erroneous description of land in an oil and gas lease offer in order to make it a valid offer.

Joe Bart Moore, A-29361 (July 1, 1963)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

The responsibility of furnishing a proper and adequate description of lands in an oil and gas lease offer is upon the applicant and cannot be shifted by him to land office personnel by his filing a document which purports to be an amendment of the land description but which merely attempts to authorize the land office personnel to describe the offered lands in a way acceptable to them and which would thus be agreeable to him.

Duncan Miller, A-29698 (Sept. 18, 1963)

Where the 30-day period for filing a bond in connection with an oil and gas offer expires on a Saturday and the offeror has by regulation until the following Monday to file the bond, and a letter written by the land office on Monday modifying the time requirement refers to the fact that the 30-day period has expired, it is more reasonable to assume that the letter was written on the assumption that the 30-day period had expired on Saturday than to assume that it was written after 3 p.m. on Monday in awareness of the fact that the 30-day period had expired at that time.

Halvor F. Holbeck, A-29595 (Oct. 9, 1963)

A homestead application is properly rejected where the lands applied for are withdrawn from entry by inclusion in a power project withdrawal.

Herman J. Schilmoeller, A-29745 (Nov. 5, 1963)

Since the determination of whether to dispose of public land pursuant to the Small Tract Act is committed to the discretion of the Secretary, it is proper to reject an application for a small tract where because of complicated survey and land problems the location and extent of the area of public land is in doubt and there is no prospect that the difficulties will be soon resolved.

A small tract application is not to be suspended where it is decided to reject it pending the resolution of survey and other problems involving the area in which the land lies.

Jean Holton Westfeldt, A-29604 (Nov. 15, 1963)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Where final proof on a desert land entry is rejected within two years after issuance of a receipt for the money paid with the proof and new proof is filed and is rejected and the entry canceled in part within two years after the new proof is filed but more than two years after the receipt was issued, the entryman is not entitled to a patent pursuant to section 7 of the act of Mar. 3, 1891.

Marvin M. McDole, A-29376(Supp.) (Nov. 29, 1963)
70 I. D. 506

AMENDMENTS

An application to amend a desert land entry to add contiguous lands to the entry after annual proofs and an extension of time to file final proof have been filed is properly rejected where there appears no substantial equitable basis for granting the amendment.

James W. Elliott, A-29075 (July 18, 1963)

The responsibility of furnishing a proper and adequate description of lands in an oil and gas lease offer is upon the applicant and cannot be shifted by him to land office personnel by his filing a document which purports to be an amendment of the land description but which merely attempts to authorize the land office personnel to describe the offered lands in a way acceptable to them and which would thus be agreeable to him.

Duncan Miller, A-29698 (Sept. 18, 1963)

An application filed under the Small Tract Act for one piece of land cannot be amended to substitute an entirely different piece of land and retain the priority accorded by the filing for the first piece when the substitute land had not been classified for small tract disposal at the time the application was filed.

Nina L. Werner et al., A-29389 (Sept. 20, 1963)

An amendment of an oil and gas offer to change the description of land sought for leasing to include the correct designation of a legal subdivision

APPLICATIONS AND ENTRIES--Continued

AMENDMENTS--Continued

owned by the United States within a reservoir area in place of a previous designation of a subdivision not within the reservoir area and not owned by the United States should not be rejected as a substitution of one tract of land for another which requires the filing of a new offer, where it appears that the offeror intended originally to apply for the land described in the amendment.

Duncan Miller, A-29697 (Dec. 4, 1963)
70 I. D. 512

An amendment of an oil and gas offer to change the description of land sought for leasing to include a proper designation of two separate subdivisions of the same section instead of a single, smaller subdivision should not be rejected as a substitution of one tract of land for another which requires the filing of a new offer where it appears that the offeror intended originally to apply for the land described in the amendment.

Duncan Miller, A-29791 (Dec. 11, 1963)

FILING

Where land is restored to disposition under the public land laws under an order which provides that applications for such lands may be filed "beginning on the date of this order" and that applications filed by non-preference-right applicants prior to a specified date would be considered as simultaneously filed as of that date, an application filed previous to that date should not be rejected as prematurely filed.

John Rovetto, A-28740 (Feb. 8, 1963)

A partial assignment of an oil and gas lease is a document required by law or decision to be filed within a stated period and as such comes within the provisions of the regulation relating to filings made on the next business day when the last day of the stated period falls on a day when the office is officially closed.

Edward T. Haas et al., A-29196 (Mar. 15, 1963)

APPLICATIONS AND ENTRIES--Continued

FILING--Continued

When a drawing to determine priority among simultaneously filed conflicting oil and gas lease offers is conducted in manner contrary to the provisions of the pertinent regulation and the order directing the drawing, it must be vacated and a new drawing held.

Evelyn R. Robertson et al., Duncan Miller, A-29251 (Mar. 21, 1963)

PRIORITY

Where an applicant for a homesite files a protest against an application to purchase a headquarter site within 30 days after the publication of the latter application, the protest being based on the assertion that the protestant has a superior right to part of the land included in the headquarter site application, the protest is properly dismissed where the protestant fails, as required by section 10 of the act of May 14, 1898, to commence an action within 60 days in a court of competent jurisdiction to quiet title to the land in conflict.

John Martin Pearson, A-29674 (Dec. 18, 1963) 70 I. D. 523

REINSTATEMENT

An adjoining farm homestead entryman who relinquishes his entry may have his entry reinstated only insofar as the land covered by the relinquishment is open to entry at the time he requests reinstatement.

Pearla (Michele) Holmes LaFleur Robert L. Collopy and Don E. Silvers, A-29328 (July 15, 1963)

BONNEVILLE POWER ADMINISTRATION

The Secretary of the Interior has authority to construct transmission lines which would be used to transmit to markets outside the Pacific Northwest power generated in the United States Columbia River Power System of the Pacific Northwest.

BONNEVILLE POWER ADMINISTRATION --Continued

The Secretary of the Interior is under no statutory geographic limitation of authority to construct such transmission lines other than the limitation in the Bonneville Project Act that transmission must be within economic transmission distance.

Authority To Construct Pacific Northwest-Pacific Southwest Transmission Line, M-36656 (June 26, 1963) 70 I. D. 237

BOUNDARIES

The location of the easterly boundary line of the area withdrawn by Public Land Order 576, which was affirmed by a departmental decision of June 27, 1960, in the case of Richard L. Oelschlaeger (A-28299), will not be disturbed in the absence of an adverse ruling by the courts.

Bernard R. Martin, A-29280 (Apr. 12, 1963)

The fact that the United States has surveyed a line as the boundary between two existing States and closed the public land surveys on that line does not establish that line as the boundary between the States or place land in one State or the other where the States have never accepted that line but have accepted as their common boundary a later different line surveyed by the United States.

Ernest M. Pellkofer, A-29832 (Aug. 29, 1963)

BUREAU OF INDIAN AFFAIRS

In the absence of the approval or concurrence of the Secretary of Agriculture a Public Land Order purporting to exclude certain lands from a national forest and reserve them under the jurisdiction of the Bureau of Indian Affairs is ineffective to remove such lands from the jurisdiction of the Secretary of Agriculture, and a purported lease of such lands approved by the Assistant Secretary of the Interior pursuant to the Navajo-Hopi Rehabilitation Act of Apr. 19, 1950 (64 Stat. 44; 25 U.S.C. sec. 631 et seq.), is invalid.

Validity of Lease No. 14-20-600-5511, October 21, 1959, Between the Bureau of Indian Affairs, Lessor, and Flagstaff Foundation for Industrial Development, Lessee, M-36659 (Sept. 23, 1963) 70 I. D. 429

BUREAU OF LAND MANAGEMENT

The director of the Bureau of Land Management in reviewing on appeal the rejection of an application for a second enlarged homestead entry because of an adverse classification may properly make an initial determination that the applicant was not qualified to make a second homestead entry because it did not appear that his first entry was lost, forfeited, or abandoned through no fault of his own and because of matters beyond his control.

Frank J. Orlando, A-29399 (July 1, 1963)

The Director of the Bureau of Land Management has authority at any time to take up and dispose of any matter pending in a land office or to review any decision of a subordinate officer.

Oscar C. Collins, Standard Oil Company of California, A-29415 (July 15, 1963) 70 I. D. 359

The Director of the Bureau of Land Management is not limited in his consideration of an appeal from a land office decision to the particular question raised by that appeal. He may, even in the absence of an appeal, take up any matter pending in any land office and dispose of it without waiting for a decision by the local land office.

Barney R. Colson, A-28617 (Sept. 16, 1963) 70 I. D. 409

The Director of the Bureau of Land Management is not limited in his consideration of an appeal from a land office decision to the particular question raised by that appeal but may rule on matters not appealed from but decided by the land office in the decision appealed from.

Metaline Contact Mines et al., A-29707 (Dec. 11, 1963)

BUREAU OF RECLAMATION

CONSTRUCTION

The Secretary of the Interior has authority to construct transmission lines which would be used to transmit to markets outside the Pacific Northwest power generated in the United States Columbia River Power System of the Pacific Northwest.

Authority To Construct Pacific Northwest-Pacific Southwest Transmission Line, M-36656 (June 26, 1963 70 I. D. 237

BUREAU OF SPORT FISHERIES AND WILDLIFE

GENERALLY

The inclusion of an interest component in establishing user charges under section 8 of the Aquarium Act is discretionary and not mandatory.

Where the language of an Act is silent on the question of interest, resort must be had to the legislative history of the applicable statute.

Payment of Interest on the Capital Cost of the National Fisheries Center and Aquarium, M-36663 (Dec. 9, 1963) 70 I. D. 514

COAL LEASES AND PERMITS

APPLICATIONS

An application for a coal prospecting permit under regulations issued pursuant to the act of Oct. 20, 1914, filed after the repeal of that act by the act of Sept. 9, 1959, is subject to rejection because of the cessation of authority of this Department to issue permits under the 1914 act; and, even though the 1959 act extended the provisions of the Mineral Leasing Act of Feb. 25, 1920, to Alaska, the land office did not have any duty or authority to consider the application as one under the 1920 act until some action was taken by the appellant to amend the application to come within that act.

A coal prospecting permit application which conflicts with an approved selection made by the State of Alaska under the Alaska Mental Health Act is properly rejected in favor of the State selection, regardless of which application was first filed

Cripple Creek Coal Company, A-29564 (Oct. 11, 1963) 70 I. D. 451

PERMITS

An application for a coal prospecting permit is properly rejected where information becomes available as to the existence and workability of coal deposits in the land after the filing of the application.

Henry D. Mikesell, A-24112 (March 11, 1946), rehearing denied (June 20, 1946), overruled to extent inconsistent.

Claude P. Heiner, A-29103 (April 22, 1963) 70 I. D. 149

COAL LEASES AND PERMITS--Continued

PERMITS--Continued

An application for a coal prospecting permit is properly rejected when information is available as to the existence and workability of coal deposits in the land.

Malcolm N. McKinnon et al., A-29588 (Aug. 2, 1963)

An application for a coal prospecting permit is properly rejected when information is available as to the existence and workability of coal deposits in the land even though it may not be sufficient to warrant an investment of $100,000,000 or more in the construction of a power plant.

K. N. Garard, A-29886 (Nov. 26, 1963)

COLOR OR CLAIM OF TITLE

GENERALLY

A color of title application is properly rejected for land which was reserved and set apart as a public reservation of forest land before the initiation of the claim described in the application.

Roland W. Getchell et al., A-29147 (Feb. 28, 1963)

Where a color of title application is filed for an island in a river and the only color of title or claim of title relied upon by the applicant must be founded upon a patent and subsequent conveyances issued for abutting lots on the river bank and upon an interpretation of State law that such a conveyance of riparian land carries title to the island, the application must be rejected where it appears that the interpretation of State law was changed before the running of the 20-year period required for a holding in good faith under the Color of Title Act.

Myrtle A. Freer et al., A-29221 (Apr. 2, 1963) 70 I. D. 145

If a valid color of title is created before the withdrawal of the lands involved, the withdrawal does not preclude the perfecting of the claim under the Color of Title Act.

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

Although land may be held in good faith under color of title by others for more than 20 years, this fact does not entitle an applicant to patent under the Color of Title Act if he did not acquire his color of title in good faith without knowledge of the defect in the title.

Clement Vincent Tillion, Jr., A-29277 (Apr. 12, 1963)

A decree of a State court holding that the owners of riparian lands have title to portions of a specific island lying in a navigable stream opposite the riparian lands and that title to the island lands passes with a conveyance of the riparian lands is sufficient to constitute color of title to support a color of title claim, and it is immaterial whether subsequently conveyances are made of the riparian lands as including parts of the island or without mention of the island.

A general rule of law followed by a State that the owner of riparian land on a navigable stream has title to an unsurveyed island lying between the riparian land and the thread of the stream does not in itself, in the absence of a ruling by a State court as to a particular island, give the riparian owner color of title to the particular island.

Color of title to portions of an island based upon a decree by a State court, which holds that riparian owners on the bank of a navigable stream own such portions of the island as are included within lines drawn from the riparian land perpendicular to the thread of the stream, does not extend to portions of surveyed lots on such island which fall outside such lines.

Pearl Christian, William Wesley Peters, A-29265 (May 31, 1963) 70 I. D. 193

Where a plat of survey shows a quarter section as consisting of a lake and a single lot 5 abutting on the lake and lot 5 is patented but a subsequent plat of survey shows the lake as being much smaller with omitted lands not surveyed as part of lot 5 and such omitted lands are surveyed as new lots 10 and 12, a conveyance of lot 5 which describes it as the N½ and the SE¼ of the quarter section is sufficient to give color of title to lots 10 and 12.

William F. Trachte, A-29260 (June 7, 1963)

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

A patent issued pursuant to a color or claim of title must be in the name of all those claiming an interest in the land or in the name of a person designated by all claiming an interest in the land.

John W. Mecom et al., A-29548 (Sept. 19, 1963)
70 I. D. 446

A color of title application filed under the provisions of the Color of Title Act of December 22, 1928, is not thereby automatically entitled to consideration as an application under the act of Feb. 19, 1925.

A color of title class 1 application must be rejected when there has been less than the 20-year, good faith, peaceful adverse possession required by statute.

Where a class 1 applicant under the Color of Title Act has not held the land applied for himself for 20 years, he can purchase the land only if his possession to the date he learned of his defective title when added to that of his immediate predecessors equals the statutory period, and such possession meets the requirements of the act.

When a holder of public land under claim or color of title learns that his title is defective, the 20-year statutory period is interrupted and any later applicant under the Color of Title Act must demonstrate that the statutory requirements have been met thereafter.

Prentiss E. Furlow, A-29646 (Nov. 22, 1963)
70 I. D. 500-501

APPLICATIONS

A class two color of title application is properly rejected where it appears, without refutation, that at some time subsequent to Jan. 1, 1901, the applicant's predecessors recognized that the land belonged to the United States; thus there has not been a claim of title to the land in good faith subsequent to Jan. 1, 1901, as required by the Color of Title Act.

David L. Williams, A-29858 (Feb. 12, 1963)

COLOR OR CLAIM OF TITLE--Continued

APPLICATIONS--Continued

Where a color of title applicant states in his application that he knew he did not have clear title to the land as of a date preceding his acquisition of the land and he does not furnish a satisfactory chain of title showing conveyances of the land to him and his grantor, his color of title application is properly rejected.

Clement Vincent Tillion, Jr., A-29277 (Apr. 12, 1963)

A class 2 color of title claim is properly rejected where the claim is based upon an asserted homestead entry made on Dec. 3, 1892, which entry was subsequently canceled, and a conveyance thereafter by the entryman in 1915 to a predecessor in title of the claimant.

Norman A. Desilet, A-29500 (July 31, 1963)

An application for a patent based on color of title must be signed by the applicant for patent and an application signed by an agent is properly rejected.

John W. Mecom et al., A-29548 (Sept. 19, 1963)
70 I. D. 446

A class 2 claim of title is properly rejected in the absence of any showing that the claim originated from some source other than a claim against the United States under a canceled or subsisting homestead entry prior to Jan. 1, 1901.

Tensaw Land and Timber Co., Inc., A-29784 (Nov. 18, 1963)

A color of title application filed under the provisions of the Color of Title Act of Dec. 22, 1928, is not thereby automatically entitled to consideration as an application under the act of Feb. 19, 1925.

A color of title class 1 application must be rejected when there has been less than the 20-year, good faith, peaceful adverse possession required by statute.

Prentiss E. Furlow, A-29646 (Nov. 22, 1963)
70 I. D. 500

COLOR OR CLAIM OF TITLE--Continued

GOOD FAITH

A class two color of title application is properly rejected where it appears, without refutation, that at some time subsequent to Jan. 1, 1901, the applicant's predecessors recognized that the land belonged to the United States; thus there has not been a claim of title to the land in good faith subsequent to Jan. 1, 1901, as required by the Color of Title Act.

David L. Williams, A-29858 (Feb. 12, 1963)

An application to purchase public land under the Color of Title Act is properly rejected where the applicant shows only that his grantor went on the land and occupied it without any apparent right and the applicant occupied the land under a conveyance from his grantor for much less than the 20 years required by the Color of Title Act.

Where a color of title application is filed for an island in a river and the only color of title or claim of title relied upon by the applicant must be founded upon a patent and subsequent conveyances issued for abutting lots on the river bank and upon an interpretation of State law that such a conveyance of riparian land carries title to the island, the application must be rejected where it appears that the interpretation of State law was changed before the running of the 20-year period required for a holding in good faith under the Color of Title Act.

Myrtle A. Freer et al., A-29221 (Apr. 2, 1963)
70 I.D. 145

Where a color of title applicant states in his application that he knew he did not have clear title to the land as of a date preceding his acquisition of the land and he does not furnish a satisfactory chain of title showing conveyances of the land to him and his grantor, his color of title application is properly rejected.

Although land may be held in good faith under color of title by others for more than 20 years, this fact does not entitle an applicant to patent under the Color of Title Act if he did not acquire his color of title in good faith without knowledge of the defect in the title.

Clement Vincent Tillion, Jr., A-29277 (Apr. 12, 1963)

COLOR OR CLAIM OF TITLE--Continued

GOOD FAITH--Continued

One holding land under a conveyance which he believes granted him land extending to the west shore line of the lake cannot be heard to say that he held in good faith under the conveyance land which is actually on the opposite or eastern shore of the lake.

William F. Trachte, A-29260 (June 7, 1963)

A class 2 color of title claim is properly rejected where the claim is based upon an asserted homestead entry made on Dec. 3, 1892, which entry was subsequently cancelled, and a conveyance thereafter by the entryman in 1915 to a predecessor in title of the claimant.

Norman A. Desilet, A-29500 (July 31, 1963)

A class 2 claim of title is properly rejected in the absence of any showing that the claim originated from some source other than a claim against the United States under a canceled or subsisting homestead entry prior to Jan. 1, 1901.

Tensaw Land and Timber Co., Inc., A-29784 (Nov. 18, 1963)

CONSTITUTIONAL LAW

The rights acquired by the United States in the public domain are determined by the common law. Under the common law, as interpreted and applied by the Supreme Court, the United States, wherever it is a littoral or riparian proprietor of public domain, has a vested right to future accretions and relictions. Because of the nature of the Federal system, and by virtue of an express provision of the Constitution, no State can, by legislation or otherwise, deprive the United States of its right to relictions or accretions.

State of Utah, A-29043 (Feb. 18, 1963)
70 I.D. 27

CONTESTS AND PROTESTS

(See also Rules of Practice)

A contest brought against a homestead entry which alleges only facts reflected by the Bureau records to constitute a charge relied upon to invalidate the entry is properly dismissed as to such charge.

Margaret L. Gilbert v. Bob H. Oliphant, A-29163 (Apr. 11, 1963) 70 I.D. 128

Where final proof on a desert land entry is rejected within two years after issuance of a receipt for the money paid with the proof and new proof is filed and is rejected and the entry canceled in part within two years after the new proof is filed but more than two years after the receipt was issued, the entryman is not entitled to a patent pursuant to section 7 of the act of Mar. 3, 1891.

Marvin M. McDole, A-29376 (Supp.) (Nov. 29, 1963) 70 I. D. 506

A private contest brought against a desert land entry which alleges facts not reflected by records of the Bureau of Land Management at the initiation of the contest which, if proved, would invalidate the entry may be upheld notwithstanding some of the facts alleged may have been known to some Bureau personnel prior to the filing of the complaint.

A contest may be dismissed if not properly corroborated, but such action will not prevent the consideration of a second contest complaint, properly corroborated, by the same party, even though the charges therein are the same as those contained in the first.

F. Don Wadsworth v. Don Farrell Anhder, Sr., A-29684 (Dec. 31, 1963) 70 I. D. 537

CONTRACTS

ACTS OF GOVERNMENT

A claim for additional compensation on account of hindrances for which the Government is responsible that arise after the making of the contract, and so do not amount to changed conditions, that serve principally to increase the volume of working time needed for achievement of the result prescribed by the contract, rather than to defer the calendar date by which such result can reasonably be achieved, and

CONTRACTS--Continued

ACTS OF GOVERNMENT--Continued

that are overcome in a manner voluntarily chosen by the contractor, rather than in a manner required by Government personnel, is a claim for breach of contract of a type as to which there is no applicable notice requirement in or under the standard form of Government construction contract (Claim A-1).

A contractor who undertakes to string a transmission line with a new variety of conductor furnished by the Government is entitled to additional compensation on account of work stoppage ordered by the Government in order to facilitate inspection of the Government for the correction of such defects, removal of obstacles to acceptable performance interposed by such defects, and other measures necessitated by their presence or suspected presence. The contractor, however, is not entitled to additional compensation for expenses incurred in devising and using reasonable stringing procedures needed because of novel qualities of the conductor, rather than because of defects in its fabrication, or for lossess incurred in unsuccessful attempts to follow the procedures customarily applied in the past to the most nearly comparable varieties of conductor, since by engaging to string a new variety of conductor the contractor assumed the responsibility to ascertain whether the prevailing methods of stringing would work well with the new product and, if not, to find and adopt methods that would (Claims B-2, B-3, C-1 through C-4, and D-1 through D-4).

A contractor is entitled to reimbursement for expense actually and reasonably incurred in complying with a direction of the Government to perform work in advance of the date when performance is due. It follows that a contractor who has encountered an excusable cause of delay, who has requested an extension of time on account of such cause, who has been denied an appropriate extension, who has been instructed to complete the work within a lesser time than would have been available if an appropriate extension had been granted, and who complies with that instruction, is entitled to reimbursement for expenditures, such as the cost of working under adverse weather conditions, that could have been saved if an appropriate extension had been granted. Where, however, the Government directs that the work be accelerated, but the contractor in fact does not accelerate its performance, no additional compensation is allowable (Claim G-2).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I. D. 242

CONTRACTS--Continued

ACTS OF GOVERNMENT--Continued

Where a contract calls for the construction of two concrete bridges, and, in addition thereto, the building of two designated detour roads for the purpose of rerouting traffic from the construction sites, and the contractor builds additional detour routes with the acquiescence of the contracting officer's representatives, this amounts to a constructive change, which entitles the contractor to additional time for performance and a consequent reduction of the Government's assessment of liquidated damages.

Appeal of Moore Brothers Company, Inc., IBCA-336 (Oct. 29, 1963)

Where Government errors in measurements contained in a contract drawing exceed a reasonable margin, as later revealed by Government field requirements, and such measurements were not susceptible of verification before bidding, the additional requirements beyond such margin constitute a constructive change order, for which the contractor is entitled to an equitable adjustment under the standard Changes clause of Standard Form 23A.

Appeal of Hunt Contracting Company, IBCA-301 (Dec. 27, 1963)

ADDITIONAL COMPENSATION

A contractor is not entitled to additional compensation for sewer pipe within manholes where the specifications concerning measurement for payment clearly exclude payment for sewer pipe within manholes. Where no ambiguity exists there is no need to construe the contract.

A contractor is not entitled to additional compensation for imported fine material for backfill where he was aware of the rocky condition of the soil prior to bidding and should have anticipated that sufficient fine material meeting the specifications might not be available in the immediate vicinity of the excavations.

Appeal of Barkley Pipeline Construction, Inc., IBCA-291 (Feb. 25, 1963)

An appeal involving a claim for additional compensation based on the contract price for deleted work not performed, will be denied where the contractor fails to submit evidence of the costs of materials and labor claimed to have been incurred in anticipation of the performance of the deleted work.

Appeal of Cecil Schweighardt, IBCA-293 (Mar. 4, 1963) 70 I. D. 85

CONTRACTS--Continued

ADDITIONAL COMPENSATION--Continued

The additional compensation to be paid as damages for breach of contract or as an equitable adjustment under a contract may properly be measured by the difference between the costs that would have been incurred by the contractor if the job had not been affected by the compensable event in suit, and the costs that were necessarily and reasonably incurred by the contractor in performing the job under the circumstances under which it actually had to be performed as a result of such compensable event. The "total cost" method whereby the sum to be paid is measured merely by the difference between the amount bid by the contractor, without regard to its reasonableness, and the costs actually incurred in performing the job, without regard to what caused them, is unacceptable in ordinary circumstances (Claims A-1 and A-2).

The expense of measures undertaken for the purpose of performing extra work resulting from a change ordered by the Government, or of overcoming hindrances resulting from a breach of contract by the Government, is allowable to the extent to which the expense was actually and reasonably incurred, and, hence, if such measures were actually and reasonably undertaken during the winter, the cost incurred in performing them at that time of the year would be allowable. When the measures so undertaken form an integral component of a series of operations that is pushed, wholly or partially, into the winter as a necessary consequence of the incorporation of such measures within the series, the compensation due the contractor also includes the amount by which the cost of the subsequent operations in the series was increased through their projection into an unfavorable season (Claim G-2).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I. D. 242

An appeal, based on claims for increased unit prices due to extra work, first presented more than 5 years after contract completion and nearly 2 years following a previous appeal, will be dismissed, where, at the hearing of the previous appeal involving related claims under the same contract, the principal owner of the contractor-appellant testified that no claims were being made for increased costs of performing the entire work. The rule of estoppel prevents a party not only from litigating again what was actually litigated in the former case, but also from litigating what might have been litigated therein.

An appeal will be dismissed where the contractor's request for additional compensation is based on overruns or underruns of estimated quantities and the items and variations involved do not

CONTRACTS--Continued

ADDITIONAL COMPENSATION--Continued

meet the criteria of the peculiar contract provisions governing adjustment of unit prices in the event of such overruns or underruns.

Appeal of R. G. Brown, Jr., and Company, IBCA-356 (July 26, 1963)

The presence of great quantities of buried tree trunks of hugh dimensions, encountered by a contractor during the process of subsoiling, requiring ripping of the land surface to a depth of 18 inches, constitutes a physical condition determined to be unusual and unknown, within the meaning of Clause 4, "Changed Conditions" of Standard Form 23A (March 1953). Appellant is entitled to an equitable adjustment of the contract price and to a concomitant extension of time for performance.

Appeal of Morgan Construction Company, IBCA-299 (Sept. 6, 1963)

A contractor is not entitled to additional compensation and payment of the total bid price for estimated quantities, in the performance of a unit price construction contract for seeding and other work, which quantities, upon completion and measurement, proved to be less than the estimated quantities in the contract bid schedule, where the contractor had determined the actual quantities required by examination of the work site and contract drawings, prior to submission of its bid.

A contractor is not entitled to an equitable adjustment of the contract price, in the performance of a unit-price contract, which authorized a reduction of 25 percent of all estimated quantities -- provided the total cost of the work was not changed by more than 25 percent -- where the reduction in the total cost resulting from reduced quantities actually required was less than 25 percent of the original total estimated cost.

Appeal of Earl B. Bates Nursery, IBCA-368 (Oct. 16, 1963)

In the absence of an express provision in the contract or a relevant statute, a contractor is not entitled to interest on payments allegedly not paid within the time required.

Appeal of Erie Controls, Inc., IBCA-350 (Nov. 7, 1963)

CONTRACTS--Continued

ADDITIONAL COMPENSATION--Continued

Where Government errors in measurements contained in a contract drawing exceed a reasonable margin, as later revealed by Government field requirements, and such measurements were not susceptible of verification before bidding, the additional requirements beyond such margin constitute a constructive change order, for which the contractor is entitled to an equitable adjustment under the standard Changes clause of Standard Form 23A.

Appeal of Hunt Contracting Company, IBCA-301 (Dec. 27, 1963)

APPEALS

The Board is without jurisdiction to consider an untimely appeal.

Appeal of Commonwealth Electric Company, IBCA-342 (Mar. 19, 1963)

A communication from a contracting officer to a contractor, in order to amount to a decision, must, at least, be so worded as to fairly and reasonably inform the contractor that a determination under the "disputes" clause is intended.

Appeal of Earl B. Bates Nursery, IBCA-368 (May 13, 1963) 70 I. D. 163

The Board lacks jurisdiction to decide an appeal by a contractor in the absence of findings of fact or decision by the contracting officer. The Board does not have original jurisdiction over contractor's claims.

Appeal of McLinn Construction Company, IBCA-369 (July 24, 1963)

A Government-furnished property clause which states that the Government will make "every reasonable effort" to deliver materials "so as to avoid any delay in the progress of the contractor's work as outlined in his construction program," but that if the contractor is delayed "because of failure of the Government to make such deliveries" the only form of adjustment allowable will be a time extension, is to be construed as making the contractor's right to monetary compensation for a delay in delivery turn upon whether the Government made every reasonable effort to deliver materials by the time when they would be needed, and is also to be construed as making the construction program submitted by the contractor the criterion, in general, for determining the time when

CONTRACTS--Continued

APPEALS--Continued

materials would be needed. If a failure to make timely delivery is proved, the burden of offering some reasonable explanation for the delay rests on the Government, and, if it offers no such explanation, the contractor is entitled to a finding that every reasonable effort was not made (Claims C-5 and E-2).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I. D. 242

The limitation upon the time for taking appeals imposed by the "Disputes" clause of the standard forms of Government contracts is jurisdictional. An appeal from a decision of the contracting officer must be dismissed if it was not taken before the end of the thirtieth day after the receipt of the decision by the contractor, or before the end of the next business day if the thirtieth day falls on a Sunday or Federal holiday, unless the appeal involves only questions of law. Such limitation may not be waived or extended once the 30 days have run.

Appeal of Lewis Construction Company, Inc. and S. L. Boutelle, IBCA-340 (July 3, 1963) 70 I. D. 352

When an appellant requests that his appeal be suspended or remanded, or defers materially its prosecution, for the purpose of facilitating reconsideration of the dispute at the contracting officer level, the appeal will be dismissed without prejudice to its subsequent reinstatement, in the event the dispute is not disposed of by agreement at that level.

Appeal of M. A. Garland Construction Company, IBCA-392 (Aug. 21, 1963)

To assure adequate docket control, in a manner consistent with contractual appeal rights, a request for an unduly long period within which to file a brief in support of the appeal will not be granted but a request for a dismissal of the appeal without prejudice to its reinstatement within the desired period will be granted.

Appeal of Sunset Construction, Inc., IBCA-388 (Aug. 29, 1963)

Under a Government contract that contains the usual form of "disputes" clause, an appeal from a findings of fact and decision of the contracting officer must be dismissed if the notice of appeal was not mailed or otherwise furnished to the contracting officer within the 30 days specified in the contract.

CONTRACTS--Continued

APPEALS--Continued

The timeliness of an appeal is governed by the time elapsed between the date when the findings of fact and decision were received by the contractor and the date when the notice of appeal was mailed by him to the contracting officer. The circumstance that the last day of the appeal period falls on a Saturday is immaterial and does not extend the appeal period.

Appeal of the Cardell Co., IBCA-384 (Sept. 3, 1963) 70 I. D. 405

When a contract appeal involves a disputed issue of fact, each party is entitled to a hearing for the purpose of offering evidence upon such issue, and, if either party does request a hearing, a decision upon the merits of the appeal without holding the requested hearing would be premature. The rules and procedures of the Board of Contract Appeals do not provide for summary judgment in favor of either party.

Appeal of Baldwin-Lima-Hamilton Corporation, IBCA-329 (Sept. 20, 1963) 70 I. D. 426

To assure adequate docket control, in a manner consistent with contractual appeal rights, a request for an unduly long extension of time within which to determine the possibility of settlement by the parties, will not be granted, but the appeal will be dismissed upon consent of both parties, without prejudice to its reinstatement within an agreed period.

Appeal of Gunther and Shirley Company and E. V. Lane Corporation, IBCA-398 (Sept. 26, 1963)

An interlocutory decision upon a contract appeal denying a motion to dismiss the appeal for lack of timely notice or protest, or denying a motion for summary judgment, leaves the appeal open for the presentation of evidence upon all disputed questions of material fact, including such a question as whether the Government was prejudiced by lack of timely notice or protest.

Appeal of Korshoj Construction Company, IBCA-321 (Sept. 27, 1963) 70 I. D. 434

CONTRACTS--Continued

APPEALS--Continued

A new claim, first presented in appellant's Notice of Appeal, is outside the jurisdiction of the Board of Contract Appeals, and will be remanded to the contracting officer for preparation and issuance of new or supplemental findings of fact and decision.

Appeal of Divide Construction Company, IBCA-402 (Sept. 27, 1963)

Upon request of an appellant an appeal will be dismissed without prejudice to its reinstatement within a prescribed period.

Appeal of James Hamilton Construction Company, IBCA-391 (Oct. 8, 1963)

In determining whether a notice of appeal from a decision of a contracting officer states with sufficient particularity the grounds of the appeal, the notice is to be read in conjunction with documents contained in the appeal file that are referred to in the notice.

The mailing of a supporting brief in a contract appeal to the Board of Contract Appeals instead of to the contracting officer is not so fundamental an error as to necessitate dismissal of the appeal.

Appeal of Vitro Corporation of America, IBCA-376 (Nov. 7, 1963) 70 I.D. 479

Where a contract appeal presents a genuine issue of material fact over which the Board of Contract Appeals has jurisdiction (such as the issue of whether a changed condition was encountered) that has not been submitted for decision on the record without a hearing, the contractor is entitled to a hearing at which evidence may be offered with respect to such issue: A motion to dismiss the appeal for failure to state a case on which any relief could be granted by the Board will be denied.

Appeal of Morgen & Oswood Construction Co., Inc., IBCA-389 (Nov. 21, 1963) 70 I.D. 495

CONTRACTS--Continued

BIDS

Generally

The additional compensation to be paid as damages for breach of contract or as an equitable adjustment under a contract may properly be measured by the difference between the costs that would have been incurred by the contractor if the job had not been affected by the compensable event in suit, and the costs that were necessarily and reasonably incurred by the contractor in performing the job under the circumstances under which it actually had to be performed as a result of such compensable event. The "total cost" method whereby the sum to be paid is measured merely by the difference between the amount bid by the contractor, without regard to its reasonableness, and the costs actually incurred in performing the job, without regard to what caused them, is unacceptable in ordinary circumstances (Claims A-1 and A-2).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I.D. 242

Where the notice of offer of a competitive oil and gas lease reserves the right to reject any and all bids, even though a bid is for more than the minimum bonus acceptable, and only one bid is received for a particular tract, that bid may properly be rejected for the reason that it is too low, even though it is above the minimum set in the lease offer.

Pan American Petroleum Corp., A-29510 (Aug. 13, 1963)

A contractor is not entitled to additional compensation and payment of the total bid price for estimated quantities, in the performance of a unit price construction contract for seeding and other work, which quantities, upon completion and measurement, proved to be less than the estimated quantities in the contract bid schedule, where the contractor had determined the actual quantities required by examination of the work site and contract drawings, prior to submission of its bid.

Appeal of Earl B. Bates Nursery, IBCA-368 (Oct. 16, 1963)

A contractor who is aware of an apparent inconsistency or ambiguity in a contract is under a duty to seek clarification prior to award of contract.

Appeal of E-W Construction Company, IBCA-297 (Oct. 23, 1963)

CONTRACTS--Continued

BREACH

A claim for additional compensation on account of hindrances for which the Government is responsible that arise after the making of the contract, and so do not amount to changed conditions, that serve principally to increase the volume of working time needed for achievement of the result prescribed by the contract, rather than to defer the calendar date by which such result can reasonably be achieved, and that are overcome in a manner voluntarily chosen by the contractor, rather than in a manner required by Government personnel, is a claim for breach of contract of a type as to which there is no applicable notice requirement in or under the standard form of Government construction contract (Claim A-1).

A contractor who undertakes to string a transmission line with a new variety of conductor furnished by the Government is entitled to additional compensation on account of work stoppages ordered by the Government in order to facilitate inspection of the conductor for fabricator-caused defects, repairs ordered by the Government for the correction of such defects, removal of obstacles to acceptable performance interposed by such defects, and other measures necessitated by their presence or suspected presence. The contractor, however, is not entitled to additional compensation for expenses incurred in devising and using reasonable stringing procedures needed because of novel qualities of the conductor, rather than because of defects in its fabrication, or for losses incurred in unsuccessful attempts to follow the procedures customarily applied in the past to the most nearly comparable varieties of conductor, since by engaging to string a new variety of conductor the contractor assumed the responsibility to ascertain whether the prevailing methods of stringing would work well with the new product and, if not, to find and adopt methods that would (Claims B-2, B-3, C-1 through C-4, and D-1 through D-4).

In the absence of express warranties or covenants by the Government, a construction contractor is not entitled to additional compensation for a delay caused by the failure of another contractor to perform, within the time set by his contract, work that is a necessary antecedent for availability of the construction site, unless the delay was due in some way to fault on the part of the Government. The awarding of a construction contract, or the issuance of notice to proceed thereunder, in circumstances where the Government knows that the antecedent work will not be finished by the time when the construction site will be needed, in the ordinary and economical course of contract performance, may be sufficient basis for a finding that the delay was due to fault of the Government (Claim G-2).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I. D. 242

CONTRACTS--Continued

CHANGED CONDITIONS

A contractor is not entitled to additional compensation for imported fine material for backfill where he was aware of the rocky condition of the soil prior to bidding and should have anticipated that sufficient fine material meeting the specifications might not be available in the immediate vicinity of the excavations.

Appeal of Barkley Pipeline Construction, Inc., IBCA-291 (Feb. 25, 1963)

A claim for additional compensation on account of hindrances for which the Government is responsible that arise after the making of the contract, and so do not amount to changed conditions, that serve principally to increase the volume of working time needed for achievement of the result prescribed by the contract, rather than to defer the calendar date by which such result can reasonably be achieved, and that are overcome in a manner voluntarily chosen by the contractor, rather than in a manner required by Government personnel, is a claim for breach of contract of a type as to which there is no applicable notice requirement in or under the standard form of Government construction contract (Claim A-1).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I. D. 242

The presence of great quantities of buried tree trunks of hugh dimensions, encountered by a contractor during the process of subsoiling, requiring ripping of the land surface to a depth of 18 inches, constitutes a physical condition determined to be unusual and unknown, within the meaning of Clause 4, "Changed Conditions" of Standard Form 23A (March 1953). Appellant is entitled to an equitable adjustment of the contract price and to a concomitant extension of time for performance.

Appeal of Morgan Construction Company, IBCA-299 (Sept. 6, 1963)

Where a contract appeal presents a genuine issue of material fact over which the Board of Contract Appeals has jurisdiction (such as the issue of whether a changed condition was encountered) that has not been submitted for decision on the record without a hearing, the contractor is entitled to a hearing at which evidence may be offered with respect to such issue: A motion to dismiss the appeal for failure to state a case on which any relief could be granted by the Board will be denied.

CONTRACTS--Continued

CHANGED CONDITIONS--Continued

Allowance of an equitable adjustment for a changed condition is not precluded merely because the changed condition also amounts to an actionable misrepresentation of breach of warranty.

The design, methods and details of the work, as described in the drawings and specifications, may properly be taken into account in determining whether changed conditions exist, since they constitute a source that can give rise to inferences, where factually and logically justified, concerning the physical conditions which the contractor was entitled or bound to expect would be encountered, and with which the physical conditions actually encountered are to be compared.

Appeal of Morgen & Oswood Construction Co., Inc., IBCA-389 (Nov. 21, 1963) 70 I. D. 495

CHANGES AND EXTRAS

An appeal involving a claim for additional compensation based on the contract price for deleted work not performed, will be denied where the contractor fails to submit evidence of the costs of materials and labor claimed to have been incurred in anticipation of the performance of the deleted work.

Appeal of Cecil Schweighardt, IBCA-293 (Mar. 4, 1963) 70 I. D. 85

A contractor who undertakes to string a transmission line with a new variety of conductor furnished by the Government is entitled to additional compensation on account of work stoppages ordered by the Government in order to facilitate inspection of the conductor for fabricator-caused defects, repairs ordered by the Government for the correction of such defects, removal of obstacles to acceptable performance interposed by such defects, and other measures necessitated by their presence or suspected presence. The contractor, however, is not entitled to additional compensation for expenses incurred in devising and using reasonable stringing procedures needed because of novel qualities of the conductor, rather than because of defects in its fabrication, or for losses incurred in unsuccessful attempts to follow the procedures customarily applied in the past to the most nearly comparable varieties of conductor, since by engaging to string a new variety of conductor the contractor assumed the responsibility to ascertain whether the prevailing methods of stringing would work well with the new product and, if not, to find and adopt methods that would (Claims B-2, B-3, C-1 through C-4, and D-1 through D-4).

CONTRACTS--Continued

CHANGES AND EXTRAS--Continued

A contractor is entitled to reimbursement for expense actually and reasonably incurred in complying with a direction of the Government to perform work in advance of the date when performance is due. It follows that a contractor who has encountered an excusable cause of delay, who has requested an extension of time on account of such cause, who has been denied an appropriate extension, who has been instructed to complete the work within a lesser time than would have been available if an appropriate extension had been granted, and who complies with that instruction, is entitled to reimbursement for expenditures, such as the cost of working under adverse weather conditions, that could have been saved if an appropriate extension had been granted. Where, however, the Government directs that the work be accelerated, but the contractor in fact does not accelerate its performance, no additional compensation is allowable (Claim G-2).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I. D. 242

An appeal will be dismissed where the contractor's request for additional compensation is based on overruns or underruns of estimated quantities and the items and variations involved do not meet the criteria of the peculiar contract provisions governing adjustment of unit prices in the event of such overruns or underruns.

Appeal of R. G. Brown, Jr., and Company, IBCA-356 (July 26, 1963)

Where extra work is ordered after the contract time has expired, but before the contract work has been completed, the contractor is entitled to an extension of time for all delays caused by or otherwise incident to the extra work. Such extension, however, is not to be treated as running from the date when the extra work was ordered, but is to be added to the original contract performance period, as extended for any other excusable delays, since the contractor is not entitled to be relieved of liquidated damages for time inexcusably lost before the extra work was ordered.

Appeal of Phoenix Floor & Tile Co., IBCA-312 (Aug. 22, 1963)

CONTRACTS--Continued

CHANGES AND EXTRAS--Continued

A contractor is not entitled to an equitable adjustment of the contract price, in the performance of a unit-price contract, which authorized a reduction of 25 percent of all estimated quantities -- provided the total cost of the work was not changed by more than 25 percent -- where the reduction in the total cost resulting from reduced quantities actually required was less than 25 percent of the original total estimated cost.

Appeal of Earl B. Bates Nursery, IBCA-368 (Oct. 16, 1963)

Where a contract calls for the construction of two concrete bridges, and, in addition thereto, the building of two designated detour roads for the purpose of rerouting traffic from the construction sites, and the contractor builds additional detour routes with the acquiescence of the contracting officer's representatives, this amounts to a constructive change, which entitles the contractor to additional time for performance and a consequent reduction of the Government's assessment of liquidated damages.

Appeal of Moore Brothers Company, Inc., IBCA-336 (Oct. 29, 1963)

Where Government errors in measurements contained in a contract drawing exceed a reasonable margin, as later revealed by Government field requirements, and such measurements were not susceptible of verification before bidding, the additional requirements beyond such margin constitute a constructive change order, for which the contractor is entitled to an equitable adjustment under the standard Changes clause of Standard Form 23A.

Appeal of Hunt Contracting Company, IBCA-301 (Dec. 27, 1963)

COMPTROLLER GENERAL

The Board lacks jurisdiction to review determinations of the Comptroller General of the United States.

Appeal of McLinn Construction Company, IBCA-369 (July 24, 1963)

CONTRACTS--Continued

CONTRACTING OFFICER

Where contracting officer erroneously issues a decision on a claim not presented to him, the decision does not have any standing or effect. Where the contracting officer has not ruled on a claim, the matter must be first disposed of by him by an appropriate findings of fact and decision, before it may be considered by the Board.

Appeal of A and H Builders, Inc., IBCA-314 (Mar. 6, 1963)

A communication from a contracting officer to a contractor, in order to amount to a decision, must, at least, be so worded as to fairly and reasonably inform the contractor that a determination under the "disputes" clause is intended.

When the contracting officer makes a decision under the "disputes" clause, he acts in a quasi-judicial capacity. The decision must represent his own judgment, rather than a determination dictated to him by another not authorized by the terms of the contract.

Appeal of Earl B. Bates Nursery, IBCA-368 (May 13, 1963) 70 I. D. 163

Under a contract for the clearing of the right-of-way for a transmission line which (1) prescribes specific standards to govern the clearing, (2) authorizes the contracting officer to issue special instructions for areas presenting special problems, and (3) states general objectives to be achieved or safeguarded through the clearing, the contracting officer may permit deviations from the specific standards by virtue of his authority to issue special instructions, provided such deviations are in keeping with the general objectives stated in the contract (Claims A-1 and A-2).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I. D. 242

When the Board discovers during the consideration of an appeal that a faulty or an erroneous or no administrative action has been taken by a contracting officer respecting a claim presented by the contractor, the Board, in interest of justice and proper contract administration, will remand the matter to the contracting officer for the taking of the appropriate contract administration action.

Appeal of McLinn Construction Company, IBCA-369 (July 24, 1963)

CONTRACTS--Continued

CONTRACTING OFFICER--Continued

Final delivery, final acceptance, and final payment do not operate to divest the contracting officer of his authority to act under the contract. Hence, these elements are not an absolute bar to allowance of a claim.

Appeal of Korshoj Construction Company, IBCA-32 (Aug. 27, 1963) 70 I. D. 400

An appeal will be remanded to the contracting officer where the findings do not contain sufficient details as to the reasons for denial of a portion of the contractor's claim.

Appeal of Paul A. Teegarden, IBCA-382 (Sept. 11, 1963)

When a claim for a time extension under a contract is presented to the contracting officer, it is the duty of the latter to make an impartial and objective determination of all questions that are directly relevant to the extent of the delays upon which such claim is founded.

Appeal of Paul A. Teegarden, IBCA-382 (Sept. 27, 1963) 70 I. D. 436

A Government motion to remand an appeal to the contracting officer for the preparation of supplemental findings of fact and decision is granted, where appellant remains silent.

Appeal of Gunther and Shirley Company and E. V. Lane Corporation, IBCA-352 (Nov. 7, 1963)

CONTRACTOR

Under the standard form of Government construction contract, the risk of loss on account of increases in the cost of the job that are not the product of any compensable act or omission of the Government, but that are caused merely by the encountering of bad construction weather, whether normal for the season of the year involved or sufficiently abnormal to constitute an excusable cause of delay, rests upon the contractor (Claims A-3 and G-2).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I. D. 242

CONTRACTS--Continued

DAMAGES

Generally

The additional compensation to be paid as damages for breach of contract or as an equitable adjustment under a contract may properly be measured by the difference between the costs that would have been incurred by the contractor if the job had not been affected by the compensable event in suit, and the costs that were necessarily and reasonably incurred by the contractor in performing the job under the circumstances under which it actually had to be performed as a result of such compensable event. The "total cost" method whereby the sum to be paid is measured merely by the difference between the amount bid by the contractor, without regard to its reasonableness, and the costs actually incurred in performing the job, without regard to what caused them, is unacceptable in ordinary circumstances (Claims A-1 and A-2).

The expense of measures undertaken for the purpose of performing extra work resulting from a change ordered by the Government, or of overcoming hindrances resulting from a breach of contract by the Government, is allowable to the extent to which the expense was actually and reasonably incurred, and, hence, if such measures were actually and reasonably undertaken during the winter, the cost incurred in performing them at that time of the year would be allowable. When the measures so undertaken form an integral component of a series of operations that is pushed, wholly or partially, into the winter as a necessary consequence of the incorporation of such measures within the series, the compensation due the contractor also includes the amount by which the cost of the subsequent operations in the series was increased through their projection into an unfavorable season (Claim G-2).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I. D. 242

Liquidated Damages

An untimely appeal, under the circumstances presented here, may amount to the presentation of a claim for extension of time.

Appeal of Commonwealth Electric Company, IBCA-342 (Mar. 19, 1963)

Where extra work is ordered after the contract time has expired, but before the contract work has been completed, the contractor is entitled to an extension of time for all delays caused by or otherwise incident to the extra work. Such extension, however, is not to be treated as running

CONTRACTS--Continued

DAMAGES--Continued

Liquidated Damages--Continued

from the date when the extra work was ordered, but is to be added to the original contract performance period, as extended for any other excusable delays, since the contractor is not entitled to be relieved of liquidated damages for time inexcusably lost before the extra work was ordered.

Appeal of Phoenix Floor & Tile Co., IBCA-312 (Aug. 22, 1963)

Where a contract calls for the construction of two concrete bridges, and, in addition thereto, the building of two designated detour roads for the purpose of rerouting traffic from the construction sites, and the contractor builds additional detour routes with the acquiescence of the contracting officer's representatives, this amounts to a constructive change, which entitles the contractor to additional time for performance and a consequent reduction of the Government's assessment of liquidated damages.

Appeal of Moore Brothers Company, Inc., IBCA-336 (Oct. 29, 1963)

Delays on the part of a contractor and his subcontractors or suppliers, due to damage to material in transit, late delivery by such suppliers, or errors in the work by subcontractors, are not excusable causes of delay within the meaning of the standard contract clause entitled "Termination for Default--Damages for Delay--Time Extensions," in absence of any proof of excusability.

Appeal of Hunt Contracting Company, IBCA-301 (Dec. 27, 1963)

DELAYS OF CONTRACTOR

The duration of a time extension for an excusable cause of delay is governed by the extent to which the excusable cause either increases the amount of time required for performance of the contract work as a whole, or defers the date by which the last of that work will be reasonably capable of completion. Depending upon the way in which the excusable cause affects the contractor's operations, the time extension may be

CONTRACTS--Continued

DELAYS OF CONTRACTOR--Continued

either longer, as in some cases where the job is projected into bad weather, or shorter, as in some cases where part of the job is unaffected, than the period during which the excusable cause was operative. Among other considerations, regard must be had for the possibility that the impact of the cause of delay might have been avoided or shortened by the contractor (Claims under headings E and F, and Claim G-1).

In the absence of countervailing considerations, the time extension allowable for an excusable cause whose primary effect upon the job is to increase the volume of the work remaining to be done, rather than to defer the time when the doing of that work will become practicable, may appropriately be measured by dividing the average daily work capacity of the contractor into the volume of work added to the job by the excusable cause. In the absence of countervailing considerations, the time extension allowable for an excusable cause that puts off the date by which the job could otherwise have been brought to an end with reasonable efforts, for a time roughly equivalent to the duration of the period while extra work is being performed, or while work is being prevented by the Government, or while some other excusable cause is operative, may appropriately be measured by the duration of such period (Claim E-3, F-3 and F-7).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I. D. 242

In determining the excusability of a delay, the timeliness of the conduct of the contractor and the Government, respectively, must be measured against the length of the performance period allowed by the contract, with the result that where the performance period is short the degree of expedition required by the contract is commensurately high.

Appeal of Phoenix Floor & Tile Co., IBCA-312 (Aug. 22, 1963)

When a claim for a time extension under a contract is presented to the contracting officer, it is the duty of the latter to make an impartial and objective determination of all questions that are directly relevant to the extent of the delays upon which such claim is founded.

Appeal of Paul A. Teegarden, IBCA-382 (Sept. 27, 1963) 70 I. D. 436

CONTRACTS--Continued

DELAYS OF CONTRACTOR--Continued

Delays on the part of a contractor and his subcontractors or suppliers, due to damage to material in transit, late delivery by such suppliers, or errors in the work by subcontractors, are not excusable causes of delay within the meaning of the standard contract clause entitled "Termination for Default--Damages for Delay--Time Extensions," in absence of any proof of excusability.

Appeal of Hunt Contracting Company, IBCA-301 (Dec. 27, 1963)

DELAYS OF GOVERNMENT

It is well settled that a claim for additional compensation based on the alleged delay of the Government in performing its contractual obligation is a claim for breach of contract in absence of a clause of the "suspenstion of work" type.

Appeal of Jensen-Rasmussen and Company and B-E-C-K Corporation, IBCA-363 (Mar. 14, 1963)

A Government-furnished property clause which states that the Government will make "every reasonable effort" to deliver materials "so as to avoid any delay in the progress of the contractor's work as outlined in his construction program," but that if the contractor is delayed "because of failure of the Government to make such deliveries" the only form of adjustment allowable will be a time extension, is to be construed as making the contractor's right to monetary compensation for a delay in delivery turn upon whether the Government made every reasonable effort to delivery materials by the time when they would be needed, and is also to be construed as making the construction program submitted by the contractor the criterion, in general, for determining the time when materials would be needed. If a failure to make timely delivery is proved, the burden of offering some reasonable explanation for the delay rests on the Government, and, if it offers no such explanation, the contractor is entitled to a finding that every reasonable effort was not made (Claims C-5 and E-2).

The duration of a time extension for an excusable cause of delay is governed by the extent to which the excusable cause either increases the amount of time required for performance of the contract work as a whole, or defers the date by which the last of that work will be reasonably capable of completion. Depending upon the way in which the excusable cause affects the contractor's operations, the time extension may be either longer, as in some cases where the job is projected into bad weather, or shorter, as in some cases where part of the job is unaffected,

CONTRACTS--Continued

DELAYS OF GOVERNMENT--Continued

than the period during which the excusable cause was operative. Among other considerations, regard must be had for the possibility that the impact of the cause of delay might have been avoided or shortened by the contractor (Claims under headings E and F, and Claim G-1).

In the absence of countervailing considerations, the time extension allowable for an excusable cause whose primary effect upon the job is to increase the volume of the work remaining to be done, rather than to defer the time when the doing of that work will become practicable, may appropriately be measured by dividing the average daily work capacity of the contractor into the volume of work added to the job by the excusable cause. In the absence of countervailing considerations, the time extension allowable for an excusable cause that puts off the date by which the job could otherwise have been brought to an end with reasonable efforts, for a time roughly equivalent to the duration of the period while extra work is being performed, or while work is being prevented by the Government, or while some other excusable cause is operative, may appropriately be measured by the duration of such period (Claims E-3, F-3 and F-7)

In the absence of express warranties or covenants by the Government, a construction contractor is not entitled to additional compensation for a delay caused by the failure of another contractor to perform, within the time set by his contract, work that is a necessary antecedent for availability of the construction site, unless the delay was due in some way to fault on the part of the Government. The awarding of a construction contract, or the issuance of notice to proceed thereunder, in circumstances where the Government knows that the antecedent work will not be finished by the time when the construction site will be needed, in the ordinary and economical course of contract performance, may be sufficient basis for a finding that the delay was due to fault of the Government (Claim G-2).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I.D. 242

An appeal will be dismissed for lack of jurisdiction where the contractor's request for additional compensation is based on Government delay, in the absence of a clause of the "Suspension of Work" type.

Appeal of R. G. Brown, Jr., and Company, IBCA-356 (July 26, 1963)

CONTRACTS--Continued

DELAYS OF GOVERNMENT--Continued

In determining the excusability of a delay, the timeliness of the conduct of the contractor and the Government, respectively, must be measured against the length of the performance period allowed by the contract, with the result that where the performance period is short the degree of expedition required by the contract is commensurately high.

Appeal of Phoenix Floor & Tile Co., IBCA-312 (Aug. 22, 1963)

DRAWINGS

The design, methods and details of the work, as described in the drawings and specifications, may properly be taken into account in determining whether changed conditions exist, since they constitute a source that can give rise to inferences, where factually and logically justified, concerning the physical conditions which the contractor was entitled or bound to expect would be encountered, and with which the physical conditions actually encountered are to be compared.

Appeal of Morgen & Oswood Construction Co., Inc. IBCA-389 (Nov. 21, 1963) 70 I. D. 495

Where Government errors in measurements contained in a contract drawing exceed a reasonable margin, as later revealed by Government field requirements, and such measurements were not susceptible of verification before bidding, the additional requirements beyond such margin constitute a constructive change order, for which the contractor is entitled to an equitable adjustment under the standard Changes clause of Standard Form 23A.

Appeal of Hunt Contracting Company, IBCA-301 (Dec. 27, 1963)

INTERPRETATION

A contractor is not entitled to additional compensation for sewer pipe within manholes where the specifications concerning measurement for payment clearly exclude payment for sewer pipe within manholes. Where no ambiguity exists there is no need to construe the contract.

Appeal of Barkley Pipeline Construction, Inc., IBCA-291 (Feb. 25, 1963)

CONTRACTS--Continued

INTERPRETATION--Continued

A site examination provision in a construction contract may have the effect of incorporating by reference into that contract those portions of the specifications of a contract with another contractor that have to do with work the performance of which is a necessary antecedent for performance of work required by the construction contract, if the condition to be created or removed by the antecedent work is a condition that falls within the scope of the site examination provisions, and if the stage of completion of the antecedent work during the bidding period is not such as admits of its qualities upon completion being forecast through visual inspection alone (Claim A-1).

Under a contract for the clearing of the right-of-way for a transmission line which (1) prescribes specific standards to govern the clearing, (2) authorizes the contracting officer to issue special instructions for areas presenting special problems, and (3) states general objectives to be achieved or safeguarded through the clearing, the contracting officer may permit deviations from the specific standards by virtue of his authority to issue special instructions, provided such deviations are in keeping with the general objectives stated in the contract (Claims A-1 and A-2)

A provision in a contract for the stringing of aluminum conductor on a transmission line to be energized at a very high voltage which states that the contractor, if he elects against stringing the line under tension, may use lagging "to prevent the conductor from being dragged over the ground or other obstructions where there is possibility of damage to the conductor" means that enough lagging must be used to forestall any reasonable possibility of damage to the conductor through contact with the ground, and requires the use of sufficient lagging to keep the conductor entirely clear of the ground where, but only where, the terrain is so fraught with hazards that avoidance of all contact between it and the conductor is needed, as a practical matter, to forestall any reasonable possibility of damage to the latter (Claim B-1).

A Government-furnished property clause which states that the Government will make "every reasonable effort" to deliver materials "so as to avoid any delay in the progress of the contractor's work as outlined in his construction program," but that if the contractor is delayed "because of failure of the Government to make such deliveries" the only form of adjustment allowable will be a time extension, is to be construed as making the contractor's right to monetary compensation for a delay in delivery turn upon whether the Government made every reasonable effort to deliver materials by the

CONTRACTS--Continued

INTERPRETATION--Continued

time when they would be needed, and is also to be construed as making the construction program submitted by the contractor the criterion, in general, for determing the time when materials would be needed. If a failure to make timely delivery is proved, the burden of offering some reasonable explanation for the delay rests on the Government, and, if it offers no such explanation, the contractor is entitled to a finding that every reasonable effort was not made (Claims C-5 and E-2).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I. D. 242

The parol evidence rule does not preclude the introduction of parol evidence for the purpose of showing whether a particular document was or was not adopted as an integration of the contract between the parties. Nor does it preclude the introduction of parol evidence for the purpose of showing that prior to the date borne by the integration a contract had actually been made, which was subsequently merged into or discharged by the integration.

Appeal of Baldwin-Lima-Hamilton Corporation, IBCA-329 (Sept. 20, 1963) 70 I. D. 426

Where the contractor's interpretation of contract specifications does not have a reasonable basis, the rule of contra proferentem will not be applied.

A contractor who is aware of an apparent inconsistency or ambiguity in a contract is under a duty to seek clarification prior to award of contract.

Appeal of E-W Construction Company, IBCA-297 (Oct. 23, 1963)

NOTICES

A claim for additional compensation on account of hindrances for which the Government is responsible that arise after the making of the contract, and so do not amount to changed conditions, that serve principally to increase the volume of working time needed for achievement of the result prescribed by the contract, rather than to defer the calendar date by which such result can reasonably be achieved, and that are overcome in a manner voluntarily

CONTRACTS--Continued

NOTICES--Continued

chosen by the contractor, rather than in a manner required by Government personnel, is a claim for breach of contract of a type as to which there is no applicable notice requirement in or under the standard form of Government construction contract (Claim A-1).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I. D. 242

The right of a contractor to compensation is dependent upon timely compliance with a protest provision in the contract. Under certain conditions failure to make timely protest may be waived by the contracting officer. The failure to waive is reviewable by the Contract Appeals Board. The principal factor to be considered in such review is whether or not the untimeliness of the notice has prejudiced the Government.

Appeal of C. C. Terry, IBCA-330 (July 30, 1963)

The right of a contractor to compensation is dependent upon timely compliance with a protest provision in the contract. This rule is not absolute but subject to exceptions. Under certain conditions failure to make timely protest may be waived by the contracting officer. The failure to waive is reviewable by the Board of Contract Appeals. One of the factors to be considered in such review is whether or not the lack of timeliness is prejudicial or injurious to the Government.

Appeal of Korshoj Construction Company, IBCA-321 (Aug. 27, 1963) 70 I. D. 400

A contracting officer's consideration of a claim for equitable adjustment on its merits constitutes a waiver of the notice requirement contained therein.

Appeal of Morgan Construction Company, IBCA-299 (Sept. 6, 1963)

PAYMENTS

A contractor is not entitled to a refund of discount taken by the Government as earned, where the Payments provisions of a supply contract specifically authorizes a discount based on the total contract price which was to be deducted from the first partial payment.

CONTRACTS--Continued

PAYMENTS--Continued

In the absence of an express provision in the contract or of a relevant statute, a contractor is not entitled to interest on payments allegedly not paid within the time required.

Appeal of Erie Controls, Inc., IBCA-350 (Nov. 7, 1963)

PERFORMANCE

A provision in a contract for the stringing of aluminum conductor on a transmission line to be energized at a very high voltage which states that the contractor, if he elects against stringing the line under tension, may use lagging "to prevent the conductor from being dragged over the ground or other obstructions where there is possibility of damage to the conductor" means that enough lagging must be used to forestall any reasonable possibility of damage to the conductor through contact with the ground, and requires the use of sufficient lagging to keep the conductor entirely clear of the ground where, but only where, the terrain is so fraught with hazards that avoidance of all contact between it and the conductor is needed, as a practical matter, to forestall any reasonable possibility of damage to the latter (Claim B-1).

A contractor who undertakes to string a transmission line with a new variety of conductor furnished by the Government is entitled to additional compensation on account of work stoppages ordered by the Government in order to facilitate inspection of the conductor for fabricator-caused defects, repairs ordered by the Government for the correction of such defects, removal of obstacles to acceptable performance interposed by such defects, and other measures necessitated by their presence or suspected presence. The contractor, however, is not entitled to additional compensation for expenses incurred in devising and using reasonable stringing procedures needed because of novel qualities of the conductor, rather than because of defects in its fabrication, or for losses incurred in unsuccessful attempts to follow the procedures customarily applied in the past to the most nearly comparable varieties of conductor, since by engaging to string a new variety of conductor the contractor assumed the responsibility to ascertain whether the prevailing methods of stringing would work well with the new product and, if not, to find and adopt methods that would (Claims B-2, B-3, C-1 through C-4, and D-1 through D-4).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I. D. 242

CONTRACTS--Continued

PROTESTS

The right of a contractor to compensation is dependent upon timely compliance with a protest provision in the contract. This rule is not absolute but subject to exceptions. Under certain conditions failure to make timely protest may be waived by the contracting officer. The failure to waive is reviewable by the Board of Contract Appeals. One of the factors to be considered in such review is whether or not the lack of timeliness is prejudicial or injurious to the Government.

Appeal of Korshoj Construction Company, IBCA-321 (Aug. 27, 1963) 70 I. D. 400

RELEASE

An exception taken by a contractor in a release only preserves his claim. It is neither a claim itself nor is it effective as a notice of appeal.

Appeal of A and H Builders, Inc., IBCA-314 (Mar. 6, 1963)

It is well settled that the failure to except an item from a final settlement voucher has the effect of barring any claim based on such item. Therefore, a contractor who, in executing a final settlement voucher, fails to include a claims item, is barred from asserting it. Under such circumstances, motion to dismiss a claim will be granted.

Appeal of Moore Brothers Company, Inc., IBCA 336 (July 17, 1963)

If a contractor, after taking an appeal, makes a valid release which discharges the claim at issue, the appeal will be dismissed.

Appeal of F. W. Case Corporation and Hood Construction Company, IBCA-345 (Aug. 9, 1963)

SPECIFICATIONS

A contractor is not entitled to additional compensation for sewer pipe within manholes where the specifications concerning measurement for payment clearly exclude payment for sewer pipe within manholes. Where no ambiguity exists there is no need to construe the contract.

Appeal of Barkley Pipeline Construction, Inc., IBCA-291 (Feb. 25, 1963)

CONTRACTS--Continued

SPECIFICATIONS--Continued

A contractor is not entitled to additional compensation for imported fine material for backfill where he was aware of the rocky condition of the soil prior to bidding and should have anticipated that sufficient fine material meeting the specifications might not be available in the immediate vicinity of the excavations.

Appeal of Barkley Pipeline Construction, Inc., IBCA-291 (Feb. 25, 1963)

A site examination provision in a construction contract may have the effect of incorporating by reference into that contract those portions of the specifications of a contract with another contractor that have to do with work the performance of which is a necessary antecedent for performance of work required by the construction contract, if the condition to be created or removed by the antecedent work is a condition that falls within the scope of the site examination provision, and if the stage of completion of the antecedent work during the bidding period is not such as admits of its qualities upon completion being forecast through visual inspection alone (Claim A-1).

Under a contract for the clearing of the right-of-way for a transmission line which (1) prescribes specific standards to govern the clearing, (2) authorizes the contracting officer to issue special instructions for areas presenting special problems, and (3) states general objectives to be achieved or safeguarded through the clearing, the contracting officer may permit deviations from the specific standards by virtue of his authority to issue special instructions, provided such deviations are in keeping with the general objectives stated in the contract (Claims A-1 and A-2).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I. D. 242

Where the contractor's interpretation of contract specifications does not have a reasonable basis, the rule of contra proferentem will not be applied.

Appeal of E-W Construction Company, IBCA-297 (Oct. 23, 1963)

The design, methods and details of the work, as described in the drawings and specifications, may properly be taken into account in determining whether changed conditions exist, since they constitute a source that can give rise to inferences, where factually and logically justified, concerning the physical conditions which the contractor was entitled or bound to expect would be encountered, and with which the physical conditions actually encountered are to be compared.

Appeal of Morgen & Oswood Construction Co., Inc., IBCA-389 (Nov. 21, 1963) 70 I. D. 495

SUBCONTRACTORS AND SUPPLIERS

In order to be entitled to an extension of time based on Clause 5(c) of Standard Form 23A (March 1953 Edition), the contractor must establish by competent proof that the failure to complete the contract was due to unforeseeable causes that were beyond the control and without the fault or negligence of the prime contractor and its subcontractors and suppliers. The Board does not follow the Andresen doctrine.

Appeal of A and H Builders, Inc., IBCA-314 (Mar. 6, 1963)

Delays on the part of a contractor and his subcontractors or suppliers, due to damage to material in transit, late delivery by such suppliers, or errors in the work by subcontractors, are not excusable causes of delay within the meaning of the standard contract clause entitled "Termination for Default--Damages for Delay--Time Extensions," in absence of any proof of excusability.

Appeal of Hunt Contracting Company, IBCA-301 (Dec. 27, 1963)

UNFORESEEABLE CAUSES

Under the standard form of Government construction contract, the risk of loss on account of increases in the cost of the job that are not the product of any compensable act or omission of the Government, but that are caused merely by the encountering of bad construction weather, whether normal for the season of the year involved or sufficiently abnormal to constitute an excusable cause of delay, rests upon the contractor (Claims A-3 and G-2).

The duration of a time extension for an excusable cause of delay is governed by the extent to which the excusable cause either increases the amount of time required for performance of the contract work as a whole, or defers the date by which the last of that work will be reasonably capable of completion. Depending upon the way in which the excusable cause affects the contractor's operations, the time extension may be

CONTRACTS--Continued

UNFORESEEABLE CAUSES--Continued

either longer, as in some cases where the job is projected into bad weather, or shorter, as in some cases where part of the job is unaffected, than the period during which the excusable cause was operative. Among other considerations, regard must be had for the possibility that the impact of the cause of delay might have been avoided or shortened by the contractor (Claims under headings E and F, and Claim G-1).

Appeals of Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 28, 1963) 70 I. D. 242

WAIVER AND ESTOPPEL

An appeal, based on claims for increased unit prices due to extra work, first presented more than 5 years after contract completion and nearly 2 years following a previous appeal, will be dismissed, where, at the hearing of the previous appeal involving related claims under the same contract, the principal owner of the contractor-appellant testified that no claims were being made for increased costs of performing the entire work. The rule of estoppel prevents a party not only from litigating again what was actually litigated in the former case, but also from litigating what might have been litigated therein.

Appeal of R. G. Brown, Jr., and Company, IBCA-356 (July 26, 1963)

The right of a contractor to compensation is dependent upon timely compliance with a protest provision in the contract. This rule is not absolute but subject to exceptions. Under certain conditions failure to make timely protest may be waived by the contracting officer. The failure to waive is reviewable by the Board of Contract Appeals. One of the factors to be considered in such review is whether or not the lack of timeliness is prejudicial or injurious to the Government.

Appeal of Korshoj Construction Company, IBCA-321 (Aug. 27, 1963) 70 I. D. 400

CONVEYANCES

The conveyance of land to Boulder City from the United States by deed subject to existing leases, pursuant to the Boulder City Act of 1958, did not

CONVEYANCES--Continued

transfer to the City outstanding mineral leases in the absence of an assignment of the leases and a renewal of such a lease by this Department is proper.

Boulder City, A-29729 (Nov. 18, 1963)

DESERT LAND ENTRY

GENERALLY

Reinstatement of cancelled desert land entries will be denied where the entries were cancelled several years ago, reinstatement was subsequently denied, and no substantial reason has been submitted for reinstatement of the entries.

Edward O. Earl and Madelon Earl, A-28567 (May 13, 1963)

When land within desert land entries is reported to be prospectively valuable for oil and gas before the entrymen submit final proof, the entries will be impressed with a reservation of oil and gas to the United States unless the entrymen contest the mineral classification and show that the classification is in error.

When land within desert land entries is subsequently reported to be prospectively valuable for oil and gas, the entrymen may show the nonmineral character of the land at any time before submission of final proof; failure to appeal from a decision of a land office which states that the land will be impressed with a reservation of the oil and gas will not affect the right to make such a showing.

Erma F. Andersen, Darl Andersen, A-29513 (July 5, 1963)

An application to amend a desert land entry to add contiguous lands to the entry after annual proofs and an extension of time to file final proof have been filed is properly rejected where there appears no substantial equitable basis for granting the amendment.

James W. Elliott, A-29075 (July 18, 1963)

DESERT LAND ENTRY--Continued

GENERALLY--Continued

The Desert Land Act, as amended, does not provide for entry on unsurveyed lands or on lands which have been reclaimed, but it does provide for a preference right to make entry after survey to one who has taken possession of a tract and has reclaimed or in good faith commenced the reclamation of the tract; however, in order for a person to be entitled to the preference right upon survey it must be shown that the acts of possession and reclamation were initiated before the land was withdrawn from entry by Executive Order No. 6910.

Vivian A. Kelsey, A-29492 (July 26, 1963)

Where election had been made to purchase the land within a desert land entry pursuant to the act of Mar. 4, 1915, and repayment of the down payment made under that election had been denied to the entrywoman, it was improper to suspend the entry under the Maggie L. Havens decision and to approve assignments of the entered lands, and the Bureau of Land Management correctly vacated previous erroneous decisions affecting the entry and held the entry subject to cancellation for failure to meet the requirements of the 1915 act if the entrywoman does not submit proper final proof.

Adelheid E. Bosworth et al., A-29601 (Nov. 4, 1963)

Desert land entries made after the act of Mar. 4, 1915, cannot be purchased under the relief provisions of that act since it applies only to entries made before its enactment and applications to purchase the entries are properly rejected regardless of whether or not Bureau employees may have erroneously advised the entrymen to file the applications, as erroneous information given by Bureau employees does not bind this Government and creates no rights in those who follow such advice which are not authorized by law.

There is no basis for reinstating desert land entries where the statutory life of the entries expired without the entrymen meeting the requirements as to reclaiming the lands and where applications to extend the entries had been properly rejected.

Anna N. Weddle, Leonard N. Forshee, A-29751 (Nov. 5, 1963)

Where final proof on a desert land entry is rejected within two years after issuance of a receipt for the money paid with the proof and new proof is filed and is rejected and the entry canceled in

DESERT LAND ENTRY--Continued

GENERALLY--Continued

part within two years after the new proof is filed but more than two years after the receipt was issued, the entryman is not entitled to a patent pursuant to section 7 of the act of Mar. 3, 1891.

Marvin M. McDole, A-29376(Supp.) (Nov. 29, 1963) 70 I.D. 506

APPLICATIONS

Where a desert land application has been rejected for the reason that the applicant has not shown that he has a permanent water right sufficient to irrigate and reclaim all of the irrigable portion of the land applied for and he subsequently indicates that he may have acquired such a right, the case will be remanded for determination as to whether he has the necessary right.

Arthur J. Dunford, A-29307 (Mar. 26, 1963)

An application for desert land entry on desert land is properly held for rejection because of the applicant's failure to present any data showing that his proposed plan of irrigation is feasible.

Clifford D. Wilson, A-29287 (Apr. 12, 1963)

Where land has been and remains closed to the filing of desert land applications, a rejected desert land application will not be reinstated.

Ethel Kruger Henry, Administratrix, Estate of Ernest H. Kruger, A-29310 (May 7, 1963)

Approval of applications for desert land entry does not give the applicants a vested right to patents; the right remains inchoate until they have fully complied with the law entitling them to patents.

Erma F. Andersen, Darl Andersen, A-29513 (July 5, 1963)

An application to amend a desert land entry to add contiguous lands to the entry after annual proofs and an extension of time to file final proof have been filed is properly rejected where there appears no substantial equitable basis for granting the amendment.

James W. Elliott, A-29075 (July 18, 1963)

DESERT LAND ENTRY--Continued

APPLICATIONS--Continued

When desert land applications have been rejected but sufficient data is submitted by the applicants to indicate the feasibility of developing the lands for agricultural purposes, the lands were at one time classified for such development, and there is an adequate water supply to irrigate the lands, the applications will be remanded to the Bureau of Land Management for further consideration and possible allowance.

Joseph A. Morrison et al., A-29397 (Aug. 6, 1963)

An application for desert land entry which describes land included in an existing desert land entry is properly rejected.

Hurlie E. Maddox, A-29917 (Nov. 26, 1963)

ASSIGNMENT

Where election had been made to purchase the land within a desert land entry pursuant to the act of Mar. 4, 1915, and repayment of the down payment made under that election had been denied to the entrywoman, it was improper to suspend the entry under the Maggie L. Havens decision and to approve assignments of the entered lands, and the Bureau of Land Management correctly vacated previous erroneous decisions affecting the entry and held the entry subject to cancellation for failure to meet the requirements of the 1915 act if the entrywoman does not submit proper final proof.

Adelheid E. Bosworth et al., A-29601 (Nov. 4, 1963)

CANCELLATION

A desert land entry is properly canceled because of the entryman's failure to submit annual proofs showing the requisite improvement of the entry in the first three years of the life of the entry.

Umberto Sarno, Phyllis Ruggio, A-29220 (Mar. 11, 1963)

It is proper to cancel a portion of a desert land entry when the final proof shows on its face that the entryman had not done anything to reclaim that portion of the entry within the time allowed by law.

Marvin M. McDole, A-29376 (Apr. 1, 1963)

DESERT LAND ENTRY--Continued

CANCELLATION--Continued

It is proper to cancel a desert land entry when the final proof shows on its face that cultivation has not been accomplished on the entry within the time allowed by law.

Ted Orlan Hicks, A-29350 (July 2, 1963)

It is proper to reject final proof and cancel a desert entry when it is apparent that neither cultivation nor reclamation of the entry has been accomplished within the period allowed by law.

Dolores B. Morris et al., A-29504 (July 25, 1963)

The Secretary of the Interior has no discretionary authority to extend the time within which a desert land entryman must make his annual expenditures and file his annual proof of them and failure to timely comply will result in cancellation of the entry.

Ira Jack Tharp, A-29630 (Oct. 3, 1963)

Where election had been made to purchase the land within a desert land entry pursuant to the act of Mar. 4, 1915, and repayment of the down payment made under that election had been denied to the entrywoman, it was improper to suspend the entry under the Maggie L. Havens decision and to approve assignments of the entered lands, and the Bureau of Land Management correctly vacated previous erroneous decisions affecting the entry and held the entry subject to cancellation for failure to meet the requirements of the 1915 act if the entrywoman does not submit proper final proof.

Adelheid E. Bosworth et al., A-29601 (Nov. 4, 1963)

A desert land entry is properly canceled where the entryman fails to answer a complaint filed in a private contest against the entry which charges that the entryman has not met the reclamation requirements of the desert land law.

F. Don Wadsworth v. Don Farrell Anhder, Sr., A-29684 (Dec. 31, 1963) 70 I. D. 537

CLASSIFICATION

When desert land applications have been rejected but sufficient data is submitted by the applicants to indicate the feasibility of developing the lands

DESERT LAND ENTRY--Continued

CLASSIFICATION--Continued

for agricultural purposes, the lands were at one time classified for such development, and there is an adequate water supply to irrigate the lands, the applications will be remanded to the Bureau of Land Management for further consideration and possible allowance.

Joseph A. Morrison et al., A-29397 (Aug. 6, 1963)

A refusal to classify land covered by a desert land application as suitable for agricultural crop production because there is no evidence of a sufficient supply of irrigation water will not be disturbed in the absence of positive and substantial evidence that the classification is erroneous.

Raymond Gee, Jr., Ruby Faye Dunlap, Paul O. Dunlap, A-29412 (Aug. 19, 1963)

It is proper to reject a desert land application for land which has only small and isolated areas of tillable soils separated by rock outcrops and underlain by rock at such shallow depths that their use for crop production would require inordinate expense to purchase and maintain equipment and to distribute water and would create wind and water erosion hazards that would be difficult to control.

Keith J. Davis et al., A-29274 (Oct. 15, 1963)

EXTENSION OF TIME

The authority of the Secretary of the Interior to grant an extension of time to file final proof on a desert land entry is conditioned upon a showing of an unavoidable delay in the construction of irrigation works without fault on the part of the entryman; the failure to produce a crop because of an unseasonable freeze is not a reason which warrants the granting of an extension.

Beryl Kleitz, Philip Rex Kleitz, A-29311 (Apr. 22, 1963)

Where a request for an extension of a desert land entry is denied because of the entryman's failure to show an unavoidable delay in the drilling of a well on his entry without fault on his part, and it appears that he has acted diligently and in good faith in otherwise developing the entry and may

DESERT LAND ENTRY--Continued

EXTENSION OF TIME--Continued

be able to show that he acted diligently and without fault in attempting to have the well drilled, he will be allowed an opportunity to make such a showing.

Angel F. Esparza, A-29428 (July 26, 1963)

The Secretary of the Interior has no discretionary authority to extend the time within which a desert land entryman must make his annual expenditures and file his annual proof of them and failure to timely comply will result in cancellation of the entry.

Ira Jack Tharp, A-29630 (Oct. 3, 1963)

When a desert land entryman fails to show that his failure to reclaim the land within the life of his entry because of an inadequate well was due to no fault of his own and that he could not readily have foreseen such failure, an extension of time to submit final proof is properly denied.

Eldon D. Childress, A-29763 (Dec. 24, 1963)

LANDS SUBJECT TO

Land within a reclamation withdrawal, even though within an irrigation district and designated under the Smith Act (act of August 11, 1916), is not subject to entry under the Desert Land Act.

Vera Belle Grover Holmes, A-29218 (Mar. 1, 1963)

Land which has been reclaimed is not subject to desert land entry whether reclaimed by the applicant or by another.

George W. Wilkinson, A-29315 (May 2, 1963)

Land which has been reclaimed is not subject to desert land entry; reclamation will be found to have taken place when water has been conducted upon a tract of land in sufficient quantity and in such a manner that irrigation of the land could have been accomplished or when actual irrigation and cultivation of the land have been performed to the degree required for final proof of a desert land entry.

Mary Helen Conlan, A-29398 (July 23, 1963)

DESERT LAND ENTRY--Continued

LANDS SUBJECT TO--Continued

The Desert Land Act, as amended, does not provide for entry on unsurveyed lands or on lands which have been reclaimed, but it does provide for a preference right to make entry after survey to one who has taken possession of a tract and has reclaimed or in good faith commenced the reclamation of the tract; however, in order for a person to be entitled to the preference right upon survey it must be shown that the acts of possession and reclamation were initiated before the land was withdrawn from entry by Executive Order No. 6910.

Vivian A. Kelsey, A-29492 (July 26, 1963)

A desert land application for land in the Imperial Irrigation District must be rejected when the land applied for is withdrawn from entry under the Reclamation Act.

Julia Helena Johnson, A-29825 (Sept. 24, 1963)

An application for desert land entry which describes land included in an existing desert land entry is properly rejected.

Hurlie E. Maddox, A-29917 (Nov. 26, 1963)

PROOF

A desert land entry is properly canceled because of the entryman's failure to submit annual proofs showing the requisite improvement of the entry in the first three years of the life of the entry.

Umberto Sarno, Phyllis Ruggio, A-29220 (Mar. 11, 1963)

It is proper to cancel a desert land entry when the final proof shows on its face that cultivation has not been accomplished on the entry within the time allowed by law.

Ted Orlan Hicks, A-29350 (July 2, 1963)

DESERT LAND ENTRY--Continued

PROOF--Continued

The Secretary of the Interior has no discretionary authority to extend the time within which a desert land entryman must make his annual expenditures and file his annual proof of them and failure to timely comply will result in cancellation of the entry.

Ira Jack Tharp, A-29630 (Oct. 3, 1963)

When a desert land entryman fails to show that his failure to reclaim the land within the life of his entry because of an inadequate well was due to no fault of his own and that he could not readily have foreseen such failure, an extension of time to submit final proof is properly denied.

Eldon D. Childress, A-29763 (Dec. 24, 1963)

WATER RIGHT

Where a desert land application has been rejected for the reason that the applicant has not shown that he has a permanent water right sufficient to irrigate and reclaim all of the irrigable portion of the land applied for and he subsequently indicates that he may have acquired such a right, the case will be remanded for determination as to whether he has the necessary right.

Arthur J. Dunford, A-29307 (Mar. 26, 1963)

EMINENT DOMAIN

Where land offered by a State in exchange for public land, pursuant to section 8 of the Taylor Grazing Act, as amended, has been used by the Department of the Navy for several years under leaseholds acquired through condemnation proceedings and the Navy's usage has depressed the value of the State's land, the value of the land for the purpose of determining whether the offered and selected lands are of equal value is to be the amount that would have to be paid for the land by the United States in proceedings brought to condemn the fee.

State of California, A-29009 (June 26, 1963)

ENLARGED HOMESTEADS

GENERALLY

The Director of the Bureau of Land Management in reviewing on appeal the rejection of an application for a second enlarged homestead entry because of an adverse classification may properly make an initial determination that the applicant was not qualified to make a second homestead entry because it did not appear that his first entry was lost, forfeited, or abandoned through no fault of his own and because of matters beyond his control.

Frank J. Orlando, A-29399 (July 1, 1963)

CULTIVATION

The cultivation requirements of the homestead laws are not satisfied by summer-fallowing land for three successive years when the entryman has made no attempt to plant a crop and has not requested a reduction in cultivation requirements because of conditions he alleges to have prevented his growing a crop.

Harry R. Boys, A-29715(Supp.) (Nov. 1, 1963)

PROOF

Enlarged homestead final proof which shows on its face that there was not a habitable house on the entry at the time it was submitted is properly rejected and the entry held for cancellation.

Donald E. Forest, A-29432 (July 19, 1963)

EQUITABLE ADJUDICATION

The Bureau of Land Management properly denies equitable adjudication to a desert land entryman who has not complied substantially with the Desert Land Law.

Umberto Sarno, Phyllis Ruggio, A-29220 (Mar. 11, 1963)

Equitable adjudication will not be granted to a homestead entryman when the only reason given for failure to meet the residence requirements of the regulations is a condition common to all who make similar entries.

Leigh B. Dennison, A-29375 (July 23, 1963)

EXCHANGES OF LAND

FOREST EXCHANGES

The repeal by the act of March 3, 1905, of acts granting the right to make forest lieu selections, did not impair certain selection rights based upon agreements between the Secretary of the Interior and the Santa Fe Pacific Railroad Company as to lands in odd-numbered sections in the San Francisco Mountains Forest Reserve, and applications for selections thereunder could be considered in the absence of other objections.

Where land claimed as the basis for a forest lieu selection right has been reconveyed to the original owner prior to any selection being made, the selection right is extinguished and this Department cannot recognize any such selection rights alleged by a purported agent or transferee of the owner, as forest lieu selection rights are not assignable.

Richard M. Lade, As Attorney In Fact For Santa Fe Pacific Railroad Company, A-29121 (Jan. 10, 1963)

Where land claimed as the basis for a forest lieu selection right has been reconveyed to the original owner prior to any selection being made, the selection right is extinguished and this Department cannot recognize any such selection rights alleged by a purported agent or transferee of the owner, as forest lieu selection rights are not assignable.

Battle Mountain Company, As Attorney In Fact For Santa Fe Pacific Railroad Company, A-29146 (Jan. 31, 1963)

EXECUTIVE ORDERS AND PROCLAMATIONS

The publication of an Executive Order in the Federal Register is constructive notice to the public of the contents thereof.

G. Scott Hammonds, A-29733 (Mar. 20, 1963)

Lands in the Tyonek Reserve (Moquawkie Reservation) in Alaska which were ". . . withdrawn from disposal, and reserved for the U.S. Bureau of Education . . ." by Executive Order 2141, Feb. 27, 1915, were ". . . withdrawn for Indian purposes or for the use and occupancy of . . . Indians . . ." within the meaning of the act of Mar. 3, 1927.

Oil and Gas Leasing on Lands Withdrawn by Executive Order for Indian Purposes in Alaska, M-36652 (May 14, 1963) 70 I.D. 166

EXECUTIVE ORDERS AND PROCLAMATIONS --Continued

Although the Secretary of the Interior is by Executive Order No. 10355 authorized to exercise the power of the President to withdraw and reserve public domain and other lands owned or controlled by the United States, including the authority to modify or revoke past or future withdrawals or reservations, such power cannot be exercised over lands in a national forest without the approval or concurrence of the Secretary of Agriculture as required by Section 1(c) of the Executive Order.

Validity of Lease No. 14-20-600-5511, October 21, 1959, Between the Bureau of Indian Affairs, Lessor, and Flagstaff Foundation for Industrial Development, Lessee, M-36659 (Sept. 23, 1963) 70 I. D. 429

FEDERAL EMPLOYEES AND OFFICERS

AUTHORITY TO BIND GOVERNMENT

Where an oil and gas lease is erroneously issued in violation of statutory authority, subsequent actions by land office personnel purporting to extend the lease or to approve an assignment of part of the lands of the lease do not validate the lease since the unauthorized actions of Government employees cannot create rights not authorized by law or estop the Government.

United Technical Industries, Inc., (Formerly Larsen Industries, Inc.) et al., A-29406 (Apr. 24, 1963)

The authority of the United States to proceed with the determination of the validity of a mining claim is not vitiated by a long delay between the initiation of the contest and the hearing on the ground that the further processing of the contest is barred by estoppel or laches because Government property is not to be disposed of contrary to law on account of the acquiescence, laches, or failure to act of its officers or agents.

United States v. William M. Barnett et al., A-29157 (May 13, 1963)

Reliance on information or advice furnished by an employee of a land office will not confer any right or interest that is not provided by law.

Oscar C. Collins, Standard Oil Company of California, A-29415 (July 15, 1963) 70 I. D. 359

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

The Department is not bound by erroneous advice given by its employees.

Pearla (Michele Holmes) LaFleur Robert L. Collopy and Don E. Silvers, A-29328 (July 15, 1963)

Misinformation furnished by a Government employee cannot vest in a person a right not authorized by law.

Lee Buck et al., A-29409 (Aug. 6, 1963)

Any statements made by Bureau of Land Management employees that certain lands may be available and suitable for scrip location do not bind this Department to classify the lands for that purpose and the location may be rejected if the lands are properly classified as more valuable and suitable for retention in Federal ownership for a different purpose.

Property Management Company, A-29144 (Aug. 19, 1963)

An applicant can gain no right to public land because he may have been misinformed by the land office that the land was available for entry.

Herman J. Schilmoeller, A-29745 (Nov. 5, 1963)

Desert land entries made after the act of Mar. 4, 1915, cannot be purchased under the relief provisions of that act since it applies only to entries made before its enactment and applications to purchase the entries are properly rejected regardless of whether or not Bureau employees may have erroneously advised the entrymen to file the applications, as erroneous information given by Bureau employees does not bind this Government and creates no rights in those who follow such advice which are not authorized by law.

Anna N. Weddle, Leonard N. Forshee, A-29751 (Nov. 5, 1963)

CONFLICT OF INTEREST

Members of O&C Advisory Boards appointed as representatives of agriculture, labor, industry, the public at large, or some other group which a member represents or for which he is in a position to speak are not employees of the Federal

FEDERAL EMPLOYEES AND OFFICERS--Continued

CONFLICT OF INTEREST--Continued

Government and therefore not subject to the conflict of interest statutes (P. L. 87-849, 76 Stat. 1119; 18 U.S.C., Supp., 202, 203, 205, 207, 208, 209).

O & C Advisory Boards - Applicability of Conflict of Interest Statutes, M-36654 (Aug. 12, 1963)

FEES

(See also Funds)

Where a Departmental regulation requires that the filing fee due in connection with a request for a 5-year extension of an oil and gas lease be paid before a certain date, a check for the filing fee (and rental) filed before, but erroneously dishonored by the drawee bank after, the pertinent date will be held to have been paid within the prescribed time.

Duncan Miller, A-28657 (Mar. 29, 1963) 70 I. D. 113

The inclusion of an interest component in establishing user charges or fees under section 8 of the Aquarium Act is discretionary and not mandatory.

If interest is to be considered, the Secretary would need to determine the proper interest rate and the effect the increased charges would have in collecting sufficient revenues to meet the specific obligations of section 8 of the Aquarium Act.

Payment of Interest on the Capital Cost of the National Fisheries Center and Aquarium, M-36663 (Dec. 9, 1963) 70 I. D. 514

FISH AND WILDLIFE SERVICE

Although the Fur Seal Act of 1944 prohibits the taking of sea otters, there is no international agreement or treaty, which can be found, as a basis for the protection of sea otter either at sea or within the territorial waters of the United States.

FISH AND WILDLIFE SERVICE--Continued

The intended purpose of the Fur Seal Act of 1944 was to regulate persons under the jurisdiction of the United States.

The Congressional intention of the Fur Seal and Alaska Statehood Acts taken as a whole was to protect sea otters in the high seas and leave the regulation of sea otters within the three-mile limit to the States.

The Fur Seal Act of 1944 fully protects fur seals both on the high seas and within the territorial waters of the States.

Regulation of Sea Otters Within the Three-Mile Limit, M-36650 (Mar. 29, 1963) 70 I. D. 107

GRAZING LEASES

RENEWAL

A grazing lease will be renewed when historical use, topography, physical features and general need favor the party who has held the lease rather than a new applicant.

Frank W. Campbell Flying Horseshoe Cattle Company, A-29435 (Aug. 6, 1963)

GRAZING PERMITS AND LICENSES

GENERALLY

Where Bureau of Land Management personnel made a range survey using the weight-estimate method of computing forage to determine the carrying capacity of the range in an above-normal precipitation year and made an adjustment in order to establish a normal precipitation year carrying capacity by means of a mathematical formula relating forage growth and amount of yearly precipitation and licensees appealed decisions reducing their grazing privileges based on the adjusted carrying capacity of the range, a decision by the hearing examiner on such appeals applying the formula but prescribing a limitation

GRAZING PERMITS AND LICENSES --Continued

GENERALLY--Continued

to its application in reducing the grazing privileges will not be disturbed where it appears from the record to be reasonable and within the discretionary authority of this Department.

Stanford Bennett et al., A-29164 (Feb. 20, 1963)

The carrying capacity of a range may properly be determined by a determination of the proper forage acre requirement for the range if the latter determination is made upon the basis of the same procedure followed for ascertaining the plant density for the range.

Benton Blackburn et al., A-29234 (Apr. 11, 1963)

Where an applicant for grazing privileges on the Federal range is found not entitled to class 1 privileges and it is not shown whether the capacity of the range will permit the granting of class 2 privileges, it is proper not to direct the district manager to continue a grant of grazing privileges on a temporary basis pending a determination by him as to whether the range has capacity for granting class 2 privileges; it is for the manager to determine in his best judgment whether temporary use can be safely granted pending a definitive range survey.

Sam Aramberri, A-29235 (Apr. 12, 1963)

Where lands have been withdrawn for the use of the Army and the use is inconsistent with usage of the land for grazing purposes, grazing permits are properly canceled as to lands within the withdrawal; the fact that the Army had instituted condemnation proceedings involving such lands does not necessarily preclude this Department from canceling the permits.

Grazing permits are licenses which may be revoked by this Department without giving rise to any right of compensation to the permittees; however, if the cancellation resulted because the lands were withdrawn for war or national defense purposes for the Army, the question as to whether the permittees are entitled to any compensation in addition to what may have been received already from the Army under the act of July 9, 1942, as amended, must rest with the Army as it is not a question which properly concerns this Department.

H. D. Mollohan and Eagle Tail Ranch, A-29335 (July 8, 1963)

GRAZING PERMITS AND LICENSES --Continued

GENERALLY--Continued

A range survey will not be disturbed solely on the basis of charges that it was not properly conducted where no positive evidence is submitted demonstrating error in the survey.

Kermit Purcell, A-29661 (Nov. 15, 1963)

ADJUDICATION

An appeal from a decision reducing grazing privileges charging that such privileges were improperly allotted because some allottees misrepresented their base qualification to the Bureau does not entitle the appellant to the benefits of a readjudication of the base qualification of the allottees when the facts relied upon to sustain the charge of misrepresentation have been a matter of record since the inception of the Taylor Grazing Act program and available for the inspection of interested persons and the appellants have made no attempt to receive permission as provided in the pertinent regulation to inspect the records.

Foster L. Mills et al., A-29330 (Jan. 14, 1963)

The failure of a range manager to comply with the departmental regulation which requires him to notify an owner of base property of an adjudication and allocation of range privileges by registered mail, allowing a right of protest, and, upon issuance of a final decision after protest, allowing a right of appeal, does not nullify an adjudication otherwise proper if, in fact, the owner does protest and appeal as though the proper notice had been given.

When an allotment is simply designated by name in a 10-year grazing permit and later a specific description of the area covered by the allotment is issued which reduces the area formerly grazed by the permittee prior to the issuance of the permit, the issuance of the description does not constitute a reduction of the permit where the evidence shows that the designation in the permit was intended to refer to the area later described and not the larger area formerly grazed by the permittee.

John E. Aagard Trust, A-29308 (July 19, 1963)

The failure of a range manager to comply with the departmental regulation which requires him to notify an owner of base property of an adjudication and allocation of range privileges by

GRAZING PERMITS AND LICENSES--Continued

ADJUDICATION--Continued

registered mail, allowing a right of protest, and, upon issuance of a final decision after protest, allowing a right of appeal, does not nullify an adjudication and allotment otherwise proper if, in fact, the owner does protest and appeal as though the proper notice had been given.

Newell A. Johnson et al., A-29301 (July 19, 1963)
70 I. D. 369

APPEALS

An appeal to the Director from a hearing examiner's decision is properly dismissed where the notice of appeal is not filed with the examiner within the 10-day period provided by the Federal Range Code.

Preston W. Swapp, Administrator for the Estate of J. Edwin Swapp, A-29935 (Apr. 23, 1963)

A range user who appeals from a decision effecting a reduction in his allotment of Federal land for grazing use is entitled to graze in the area allowed to him before the proposed reduction while his appeal is pending.

Newell A. Johnson et al., A-29301 (July 19, 1963)
70 I. D. 369

An appeal from the denial of a protest against the issuance of a grazing license to another is improperly dismissed before the introduction of evidence at a hearing when the protestant alleges that he will be damaged by the granting of the license because it will result in licensing in excess of the grazing capacity of the Federal range and will deprive him of Federal range to which he has an established right.

John and Adellie Manzonite, IGD 615 (1956), distinguished.

Ashdown Brothers and Parson U. Webster, A-29334 (July 26, 1963)

A decision by a hearing examiner denying a motion to vacate a decision of a district manager of a grazing district on only one of the issues raised by an appeal from the district manager's decision and indicating that a hearing would be held on other issues raised by the appeal is not a final disposition of the appeal but is in the nature of an interlocutory decision which is not appealable

GRAZING PERMITS AND LICENSES--Continued

APPEALS--Continued

prior to the rendering of a decision by the hearing examiner on the merits of the whole appeal, and an appeal from such a decision will be dismissed as premature.

Where a hearing examiner limits testimony to one of the issues raised by an appeal to him from a decision of a district manager of a grazing district, renders a decision thereon, and orders a hearing on the remaining issues raised by the appeal, an appeal to the Director, Bureau of Land Management, from the hearing examiner's decision on that phase of the appeal may be deferred until the hearing examiner renders his decision on the remaining issues.

Newell A. Johnson et al., A-29236 (July 31, 1963)
70 I. D. 388

An appeal to the Director of the Bureau of Land Management from a hearing examiner's decision is properly dismissed where the appeal is not filed with the Director within the 30-day period provided by the Federal Range Code.

Howard Ainge, Vera Bell Ainge, A-30038 (Sept. 10, 1963)

As the Federal Range Code requires that notice of intention to appeal to the Director of the Bureau of Land Management from a decision of a hearing examiner be filed with the hearing examiner within 10 days after receipt by the appellant of the hearing examiner's decision, irrespective of whether a request for a transcript of testimony is made, it is proper for the Director to dismiss an appeal to him when the notice of intention is not filed at all, even though the appellant subsequently files timely the appeal and brief required by another provision of the Range Code.

Zelph S. Calder, A-30039 (Sept. 18, 1963)

An appeal to the Director of the Bureau of Land Management from a decision of a hearing examiner is properly dismissed where the appeal is not filed in the Office of the Director in Washington, D. C., within 30 days after receipt of the hearing examiner's decision and a copy of the appeal is not served upon the Bureau's State Director within the same period, as required by the Federal Range Code.

A. C. Caldwell, A-30103 (Nov. 5, 1963)

GRAZING PERMITS AND LICENSES--Continued

APPEALS--Continued

A notice of appeal from a hearing examiner's decision to the Director, Bureau of Land Management, is not to be dismissed as untimely filed when it is delivered by mistake by the post office, within the appeal period, to an office of the Bureau of Reclamation and is accepted by an employee of the Bureau of Reclamation who forward it to the office of the hearing examiner, to which it was correctly addressed, and it is received there the day after it was required to be filed in that office.

Neither service nor proof of service upon a State Director of a notice of appeal from a hearing examiner's decision to the Director, Bureau of Land Management, within a 15-day period from service is required by regulation 43 CFR 161.10, and it is error to dismiss an appeal for failure to file proof of service within the time prescribed.

Herschel Bedke et al., A-29758 (Nov. 15, 1963)

APPORTIONMENT OF FEDERAL RANGE

No abuse of discretion is shown by the Bureau of Land Management's refusal to grant a grazing license for one sub-unit to parties who had been licensed in another sub-unit for a period of years merely because they believe the one sub-unit has greater grazing potential, with reseeding, than the other and although it may have been used by their predecessors during the priority period.

Bert and Paul Smith, A-29345 (June 10, 1963)

A voluntary agreement among the users of the Federal range in a particular area which is approved by the Bureau of Land Management or its predecessor, the Grazing Service, does not effect a permanent division of the range which nullifies the responsibility of the Department to adjudicate the rights of permittees on the Federal range.

Where the Bureau of Land Management personnel made a range survey and determined grazing capacity in accordance with accepted practices, their conclusions will be accepted in the absence of evidence that their findings were improperly determined; however, if there is substantial evidence that in a subsequent year the range does not have the capacity attributed to it by the survey and that a permanent change in the condition of the range may have occurred, a recheck of the range will be ordered to determine the present capacity of the range.

GRAZING PERMITS AND LICENSES--Continued

APPORTIONMENT OF FEDERAL RANGE --Continued

A permittee may properly be required to confine his grazing operations to an allotment even though it may not have the forage to satisfy his licensed demand pending a recheck of the range to determine its grazing capacity.

Newell A. Johnson et al., A-29301 (July 19, 1963) 70 I.D. 369

A voluntary agreement among the users of the Federal range in a particular area which is approved by the Bureau of Land Management or its predecessor, the Grazing Service, does not effect a permanent division of the range which nullifies the Bureau's responsibility to adjudicate the rights of permittees on the range.

John E. Aagard Trust, A-29308 (July 19, 1963)

It is not unreasonable and arbitrary to divide an area of the Federal range, formerly grazed in common, into allotments and to require fencing of the allotments immediately when such action appears necessary to permit proper utilization of the range.

The establishment of an allotment will not be disturbed upon the complaint of an allottee that it contains poisonous weeds and insufficient water and poses a trailing problem where it appears that other allotments have a similar problem as to poison and water and that trailing to the allotment is not practically impossible although inconvenient.

Kermit Purcell, A-29661 (Nov. 15, 1963)

BASE PROPERTY (LAND)

Generally

Base property qualifications of other users in a grazing unit are not subject to attack as a matter of right by a user in the unit where more than three consecutive years have passed in which the qualifications were recognized in licenses.

Although the Bureau of Land Management may make adjustments in licenses or permits at any time

GRAZING PERMITS AND LICENSES--Continued

BASE PROPERTY (LAND) --Continued

Generally--Continued

when necessary to comply with the Federal Range Code, it is not error to refuse to readjudicate licenses upon the basis of evidence that the base qualifications were improperly determined where such evidence is not conclusive.

Kermit Purcell, A-29661 (Nov. 15, 1963)

Dependency by Use

The failure of a licensee of the federal range to request grazing privileges or nonuse to the extent of earlier licenses supported by the same base property for two consecutive years reduces the qualification of the base property to the extent that it has not been covered by the requests for two consecutive years, even though the qualifications of the base property have not been formally adjudicated.

Anawalt Ranch & Cattle Co. et al., A-28888 (Jan. 31, 1963) 70 I. D. 6

The 1956 amendment to 43 CFR 161.6(e)(9) is not so clear in meaning as to warrant holding that one who has been given for many years grazing privileges on the basis of 90 percent Federal range use will lose Class I base property qualifications computed on a 100 percent Federal range use because he fails after the adoption of the 1956 amendment to ask for privileges computed on a 100 percent Federal range use basis.

Newell A. Johnson et al., A-29301 (July 19, 1963) 70 I. D. 369

An applicant for grazing privileges is properly denied nonuse when it appears that he has not offered his base property to the full extent of its qualification in an application for a license or applied for nonuse for a period of two consecutive years.

Ray C. Bedke, A-29408 (July 23, 1963)

An application for Federal grazing privileges offering as base land owned by the applicant which was never offered and approved as base for the award of Federal grazing privileges is properly rejected.

John J. Gribble, A-29491 (July 26, 1963)

GRAZING PERMITS AND LICENSES--Continued

CANCELLATION AND REDUCTIONS

An appeal from a reduction in grazing privileges charging that the range survey upon which the reduction was based was unreliable will not entitle the appellant to a reversal when the record shows that the charge is supported only by the personal opinion of the appellant and his coappellants as to the condition of the range and their expert's criticism of the Bureau's measurement of grazing capacity accompanied by his admission that he had never made a survey for this purpose and his failure to suggest how a proper survey should be made and there is adequate evidence submitted by the Bureau and the intervenors supporting the reliability of the survey in question.

Foster L. Mills et al., A-29330 (Jan. 14, 1963)

Decisions reducing the grazing privileges of licensees on the Federal range are properly affirmed when the appellants complain that the survey to determine the carrying capacity of the range upon which the reductions were based was unreliable but fail to show actual error in the survey.

Virgil and Elizabeth Russell et al., A-29232 (Jan. 14, 1963)

Where Bureau of Land Management personnel made a range survey using the weight-estimate method of computing forage to determine the carrying capacity of the range in an above-normal precipitation year and made an adjustment in order to establish a normal precipitation year carrying capacity by means of a mathematical formula relating forage growth and amount of yearly precipitation and licensees appealed decisions reducing their grazing privileges based on the adjusted carrying capacity of the range, a decision by the hearing examiner on such appeals applying the formula but prescribing a limitation to its application in reducing the grazing privileges will not be disturbed where it appears from the record to be reasonable and within the discretionary authority of this Department.

Stanford Bennett et al., A-29164 (Feb. 20, 1963)

Where lands have been withdrawn for the use of the Army and the use is inconsistent with usage of the land for grazing purposes, grazing permits are properly canceled as to lands within the withdrawal; the fact that the Army had instituted condenmation proceedings involving such lands does not necessarily preclude this Department from canceling the permits.

Grazing permits are licenses which may be revoked by this Department without giving rise to any

GRAZING PERMITS AND LICENSES--Continued

CANCELLATION AND REDUCTIONS--Continued

right of compensation to the permittees; however, if the cancellation resulted because the lands were withdrawn for war or national defense purposes for the Army, the question as to whether the permittees are entitled to any compensation in addition to what may have been received already from the Army under the act of July 9, 1942, as amended, must rest with the Army as it is not a question which properly concerns this Department.

H. D. Mollohan and Eagle Tail Ranch, A-29335 (July 8, 1963)

FEDERAL RANGE CODE

An appeal to the Director from a hearing examiner's decision is properly dismissed where the notice of appeal is not filed with the examiner within the 10-day period provided by the Federal Range Code.

Preston W. Swapp, Administrator for the Estate of J. Edwin Swapp, A-29935 (Apr. 23, 1963)

An appeal to the Director of the Bureau of Land Management from a hearing examiner's decision is properly dismissed where the appeal is not filed with the Director within the 30-day period provided by the Federal Range Code.

Howard Ainge, Vera Bell Ainge, A-30038 (Sept. 10, 1963)

HEARINGS

An appeal based upon an allegation that a hearing on grazing privileges was unfair, supported by charges that the examiner denied adequate time to prepare for the hearing, that exhibits were tampered with, and that the Bureau questioned the qualifications of its own employee, will not be deemed sufficient to entitle the appellant to a reversal of the decision based on the hearing when the record shows that continuances were granted which resulted in about four months for preparation of the case after the time originally set for the hearing; that tampering included only the placing of additional papers relating to transactions between the Bureau and individual range users in the files between dates of the original and continued hearings and that the Bureau adduced evidence in the examination of its employee indicating that he was being trained for the assumption of responsibility but had not been given responsibility in the matter at issue

GRAZING PERMITS AND LICENSES--Continued

HEARINGS--Continued

during the hearing so that his testimony as an adverse witness for the appellant could not be regarded as the testimony of an expert.

Foster L. Mills et al., A-29330 (Jan. 14, 1963)

An appeal from the denial of a protest against the issuance of a grazing license to another is improperly dismissed before the introduction of evidence at a hearing when the protestant alleges that he will be damaged by the granting of the license because it will result in licensing in excess of the grazing capacity of the Federal range and will deprive him of Federal range to which he has an established right.

John and Adellie Manzonite, IGD 615 (1956), distinguished.

Ashdown Brothers and Parson U. Webster, A-29334 (July 26, 1963)

HEARINGS EXAMINER

A charge of improper conduct of a hearing examiner which alleges specifically that during "off the record" periods at the hearing he looked at maps which were exhibits posted on a bulletin board and listened to discussions about the maps by personnel of the Bureau of Land Management will be dismissed as failing to show any conduct which vitiated the hearing.

Virgil and Elizabeth Russell et al., A-29232 (Jan. 14, 1963)

HOMESTEADS (ORDINARY)

(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldier's Additional Homesteads, Stockraising Homesteads)

GENERALLY

A petition, filed in 1961, to reinstate a homestead entry allowed in 1913 and canceled in 1919 for failure to submit final proof within the statutory

HOMESTEADS (ORDINARY)--Continued
(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldier's Additional Homesteads, Stockraising Homesteads)

GENERALLY--Continued

period will be denied where the death of the entryman in 1917 was never, prior to the petition for reinstatement, reported to the Department and where the entryman's widow, who survived him by several years, apparently never made any effort to perfect the homestead entry.

Edward Brown et al., A-29537 (Sept. 13, 1963)

APPLICATIONS

Land embraced in a recorded settlement claim in Alaska is not available for homestead entry and an application to make homestead entry on such land must be rejected.

Edwin P. Knapp, Kenneth M. Crockett, A-29913 (Sept. 18, 1963) 70 I.D. 441

A homestead application is properly rejected where the lands applied for are withdrawn from entry by inclusion in a power project withdrawal.

Herman J. Schilmoeller, A-29745 (Nov. 5, 1963)

CANCELLATION OF ENTRY

A homestead entry is properly canceled when the final proof submitted by the entryman shows on its face that he did not cultivate 1/16 of the entry in the second year of the entry and 1/8 in the third year and thereafter until final proof was submitted.

Margaret L. Gilbert v. Bob H. Oliphant, A-29163 (Apr. 11, 1963) 70 I.D. 128

A homestead entry is properly canceled when the entryman fails to live on his entry for at least seven months during any one year of the life of the entry.

Leigh B. Dennison, A-29375 (July 23, 1963)

HOMESTEADS (ORDINARY)--Continued
(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldier's Additional Homesteads, Stockraising Homesteads)

CANCELLATION OF ENTRY--Continued

Where homestead final proof on its face shows that an entryman has never attempted cultivation of one-eighth of the entered lands during any entry year, the proof is defective on its face and may properly be rejected and the entry canceled.

Joseph B. Deisher, A-29434 (July 26, 1963)

CLASSIFICATION

Land which is properly classified for retention in Federal ownership may not be disposed of under the homestead law, the public sale law, or the small tract act.

Bert Leander Sargent et al., A-28809, A-29284 (Jan. 30, 1963)

It is proper to classify as unsuitable for homestead purposes land that if placed under cultivation would create an additional burden upon the underground water supply in a critical groundwater area and that is sought for the cultivation of an atypical crop that requires very little water.

Franklin D. Plant et al., A-29606 (Aug. 26, 1963)

CONTESTS

Although the rights of a homestead settler on public lands covered by an existing entry attach instantly on the relinquishment of the prior entry and are superior to those of settlers or applicants initiating their rights later, such a settlement is nevertheless subject to the superior right of a contestant who secures the cancellation of the entry.

An allegation in a private contest complaint filed immediately after the end of the second entry year which charges that the entryman failed to have under cultivation 1/16 of the acreage meets the requirements of the regulation that a contest complaint must allege in clear and concise language the facts which constitute the grounds for the contest.

Charles Lewellen, A-29644 (Nov. 5, 1963) 70 I.D. 475

HOMESTEADS (ORDINARY)--Continued
See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldier's Additional Homesteads, Stockraising Homesteads)

CULTIVATION

The breaking, planting or seeding, and tillage for a crop which constitute cultivation of the soil of a homestead entry must include such acts and be done in such manner as to be reasonably calculated to produce profitable results.

Margaret L. Gilbert v. Bob H. Oliphant, A-29163 (Apr. 11, 1963) 70 I.D. 128

In order for a homestead entryman on the Kenai Peninsula in Alaska to be entitled to the grant of oil and gas deposits provided for in the act of September 14, 1960, compliance with the requirements of the homestead laws, except for actual submission of final proof, must have been made prior to July 23, 1957, and where the entryman's final proof did not show that one-eighth of the entry was cultivated prior to that time, there was not compliance with all the requirements for patent and the entryman was not entitled to the benefits of the 1960 act.

Wilford S. Jones, A-29320 (May 2, 1963)

Although a World War I veteran having more than 19 months military service credit may file acceptable final proof during the first year of his homestead entry without showing cultivation, if the filing of the final proof is delayed until some time in the second entry year during a a cultivable season, the final proof must show that the required cultivation for the second year has been initiated in order to be acceptable.

Homer D. Smith, A-29351 (July 1, 1963)

The requirements as to cultivation of an additional homestead entry may be reduced if the entryman meets with some misfortune which renders him reasonably unable to cultivate the prescribed area in the brief time available for such cultivation.

Sterling E. Whaley, A-29171 (July 18, 1963)

Where homestead final proof on its face shows that an entryman has never attempted cultivation of one-eighth of the entered lands during any entry year, the proof is defective on its face and may properly be rejected and the entry canceled.

This Department is not justified in reducing the area required to be cultivated in a homestead entry in Alaska where the misfortune relied upon to justify a reduction, flooding of the cultivated area at the end of the second year, is not shown

HOMESTEADS (ORDINARY)--Continued
See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldier's Additional Homesteads, Stockraising Homesteads)

CULTIVATION--Continued

to have prevented cultivation during succeeding years of the entry.

Joseph B. Deisher, A-29434 (July 26, 1963)

FINAL PROOF

Although a World War I veteran having more than 19 months military service credit may file acceptable final proof during the first year of his homestead entry without showing cultivation, if the filing of the final proof is delayed until some time in the second entry year during a cultivable season, the final proof must show that the required cultivation for the second year has been initiated in order to be acceptable.

Homer D. Smith, A-29351 (July 1, 1963)

Where the statutory life of a second homestead entry has expired without the submission of final proof, the Bureau properly issued a notice to the entryman to file final proof within 30 days or to show cause why the entry should not be canceled for failure to make the requisite final proof.

William Dittman, A-29909 (July 18, 1963)

Where homestead final proof on its face shows that an entryman has never attempted cultivation of one-eighth of the entered lands during any entry year, the proof is defective on its face and may properly be rejected and the entry canceled.

Joseph B. Deisher, A-29434 (July 26, 1963)

Final proof under a settlement claim in Alaska is not acceptable where it does not show that the homesteader established his residence on the claim within six months after filing his notice of settlement.

Edwin P. Knapp, Kenneth M. Crockett, A-29913 (Sept. 18, 1963) 70 I.D.441

HOMESTEADS (ORDINARY)--Continued
(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldier's Additional Homesteads, Stockraising Homesteads)

LANDS SUBJECT TO

Land withdrawn from appropriation under the public land laws is not subject to settlement or to the initiation of claim under the homestead laws, and a homestead claim located on such land is invalid.

Bernard R. Martin, A-29280 (Apr. 12, 1963)

A homestead application is properly rejected when the land has previously been withdrawn from entry.

Donald S. McAuley, A-29269 (July 1, 1963)

A tract of land which had been reserved for the use by the Department of Agriculture as an experimental station and then later turned over to the University of Alaska pursuant to Congressional authority is not subject to homestead entry and a homestead application for such lands is properly rejected.

Emma Grace Lowe, A-29554 (July 31, 1963)

Land embraced in a recorded settlement claim in Alaska is not available for homestead entry and an application to make homestead entry on such land must be rejected.

Edwin P. Knapp, Kenneth M. Crockett, A-29913 (Sept. 18, 1963) 70 I. D. 441

A homestead application is properly rejected where the lands applied for are withdrawn from entry by inclusion in a power project withdrawal.

Herman J. Schilmoeller, A-29745 (Nov. 5, 1963)

HOMESTEADS (ORDINARY)--Continued
(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldier's Additional Homesteads, Stockraising Homesteads)

MILITARY SERVICE

Although a World War I veteran having more than 19 months military service credit may file acceptable final proof during the first year of his homestead entry without showing cultivation, if the filing of the final proof is delayed until some time in the second entry year during a cultivable season, the final proof must show that the required cultivation for the second year has been initiated in order to be acceptable.

Homer D. Smith, A-29351 (July 1, 1963)

A homestead entryman who by reason of military service is entitled to two years' credit toward the cultivation and residence requirements for patent under the homestead law is required to meet the residence requirements of the law for at least one year before he can be benefitted by the service credit.

Leigh B. Dennison, A-29375 (July 23, 1963)

MINERAL RESERVATION

In order for a homestead entryman on the Kenai Peninsula in Alaska to be entitled to the grant of oil and gas deposits provided for in the act of September 14, 1960, compliance with the requirements of the homestead laws, except for actual submission of final proof, must have been made prior to July 23, 1957, and where the entryman's final proof did not show that one-eighth of the entry was cultivated prior to that time, there was not compliance with all the requirements for patent and the entryman was not entitled to the benefits of the 1960 act.

Wilford S. Jones, A-29320 (May 2, 1963)

A homestead entry in Alaska and any patent issued for it will be impressed with a reservation of oil and gas when the Geological Survey has reported the entered lands to be prospectively valuable for oil and gas before final proof had been filed and proper notice was given by the Bureau of Land Management, in accordance with regulation 43 CFR 102.22(a), as amended, of that fact, and of the entryman's right to apply for a reclassification of the lands, accompanying the re-

HOMESTEADS (ORDINARY)--Continued
(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldier's Additional Homesteads, Stockraising Homesteads)

MINERAL RESERVATION--Continued

quest with a showing, or to appeal, and no error is shown by the entryman's appeal from that action, and no request, with a showing, has been filed.

John E. Caston, A-29600 (Aug. 2, 1963)

A homestead entryman who fails to earn equitable title to his entry before the Geological Survey reports that the land is prospectively valuable for oil and gas is properly required to petition for reclassification of the land as nonmineral in character or, failing to attempt or to obtain a favorable decision on a petition for reclassification, to accept a patent reserving to the United States the oil and gas deposits in the land and the right to develop them.

Clarence G. Beckhorn, A-29439 (Sept. 19, 1963)

RELINQUISHMENT

An adjoining farm homestead entryman who relinquishes his entry may have his entry reinstated only insofar as the land covered by the relinquishment is open to entry at the time he requests reinstatement.

Pearla (Michele) Holmes LaFleur Robert L. Collopy and Don E. Silvers, A-29328 (July 15, 1963)

RESIDENCE

A homestead entry is properly canceled when the entryman fails to live on his entry for at least seven months during any one year of the life of the entry.

Leigh B. Dennison, A-29375 (July 23, 1963)

This Department has no authority to relieve homesteaders of the residence requirements of the homestead laws.

A leave of absence from a settlement claim in Alaska may be granted only if the applicant has established his residence on the claim.

HOMESTEADS (ORDINARY)--Continued
(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldier's Additional Homesteads, Stockraising Homesteads)

RESIDENCE --Continued

Final proof under a settlement claim in Alaska is not acceptable where it does not show that the homesteader established his residence on the claim within six months after filing his notice of settlement.

Edwin P. Knapp, Kenneth M. Crockett, A-29913 (Sept. 18, 1963) 70 I. D. 441

RIGHTS OF WIDOWS, HEIRS, OR DEVISEES

A petition, filed in 1961, to reinstate a homestead entry allowed in 1913 and canceled in 1919 for failure to submit final proof within the statutory period will be denied where the death of the entryman in 1917 was never, prior to the petition for reinstatement, reported to the Department and where the entryman's widow, who survived him by several years, apparently never made any effort to perfect the homestead entry.

Edward Brown et al., A-29537 (Sept. 13, 1963)

SECOND ENTRY

An application for a second homestead entry under the act of Sept. 5, 1914, is properly rejected in the absence of sufficient showing that the applicant lost, forfeited, or abandoned the original entry through no fault of his own or because of matters beyond his control.

Kermit A. Dowse, A-29355 (June 7, 1963)

The Director of the Bureau of Land Management in reviewing on appeal the rejection of an application for a second enlarged homestead entry because of an adverse classification may properly make an initial determination that the applicant was not qualified to make a second homestead entry because it did not appear that his first entry was lost, forfeited, or abandoned through no fault of his own and because of matters beyond his control.

Frank J. Orlando, A-29399 (July 1, 1963)

HOMESTEADS (ORDINARY)--Continued
(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldier's Additional Homesteads, Stockraising Homesteads)

SECOND ENTRY--Continued

A second homestead entry may not be allowed where the applicant does not show that his first entry was lost, forfeited, or abandoned through no fault of his.

Pearla (Michele) Holmes LaFleur Robert L. Collopy and Don E. Silvers, A-29328 (July 15,

Where an applicant for a second homestead entry indicates that he relinquished his first entry just to secure better land and that the land in the entry was too steep and rough for cultivation but he did not know it because the land was covered with snow when he visited it, he did not lose, forfeit, or abandon the first entry because of matters beyond his control so as to entitle him to a second homestead entry and his application is properly rejected.

Orland F. Monasmith, A-29457 (July 24, 1963)

An application for a second homestead entry under the act of Sept. 5, 1914, is properly rejected in the absence of a sufficient showing that the applicant lost, forfeited, or abandoned the original entry through no fault of his own or because of matters beyond his control.

John E. Schulz, A-29552 (Sept. 25, 1963)

An application for a second homestead entry under the act of Sept. 5, 1914, is properly rejected in the absence of sufficient showing that the applicant lost, forfeited, or abandoned the original entry through no fault of his own or because of matters beyond his control.

James W. Byrd, A-29772 (Nov. 5, 1963)

SETTLEMENT

Where a homestead settler on unsurveyed public land in Alaska initiates his homestead claim by

HOMESTEADS (ORDINARY)--Continued
(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldier's Additional Homesteads, Stockraising Homesteads)

SETTLEMENT--Continued

settling upon the land while it was subject to the homestead entry of another and subsequently files notice of such settlement in the land office after relinquishment of the prior entry, his rights attach instantly on the filing of the relinquishment of the existing homestead and are superior to the rights of a homestead settler who files his notice of settlement and settles on the land subsequent to the relinquishment.

Ernest J. Ackermann, Clifford V. Young, A-29349 (July 26, 1963) 70 I.D. 378

Although the rights of a homestead settler on public lands covered by an existing entry attach instantly on the relinquishment of the prior entry and are superior to those of settlers or applicants initiating their rights later, such a settlement is nevertheless subject to the superior right of a contestant who secures the cancellation of the entry.

Charles Lewellen, A-29644 (Nov. 5, 1963) 70 I.D. 475

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

GENERALLY

Reduction in the acreage of an Indian allotment is proper when an examination affirms that use has been made of only a small portion of the land as a dwelling site.

Mary Lee Williams Smith Kokotovich, A-28726 (Jan. 24, 1963)

Reduction in the acreage of the land described in an application for Indian allotment is proper when it appears that use of only a small portion of the land as a dwelling site and as a hunting and fishing camp has been made for short periods each year.

Frank Kitka, A-29341 (June 7, 1963)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN --Continued

GENERALLY--Continued

A minor child of an Indian is not required to show settlement upon the land included in the application for allotment, but the right of such minor child to receive an allotment depends upon a showing of a settlement by the Indian parent upon an allotment sought in the parent's own behalf.

Rollandine Ruth Landergen, Rolland D. Landergen, A-29362 (July 17, 1963)

LANDS SUBJECT TO

Where an applicant for an Indian allotment on public land reserved as a townsite claims occupancy and dominion over the land by his predecessors in interest before the land was reserved as a townsite, his application is properly rejected in the absence of any evidence furnished by him to support his assertion.

Eddie Shaw, A-29482 (July 25, 1963)

SETTLEMENT

An application for Indian allotment under the act of February 8, 1887, is properly rejected when the claim of settlement upon the land selected for allotment includes only use of the land many years ago as a storage depot for goods to be transported from the land of the applicant's father to that of his grandfather, for some sporadic hunting, fishing, and trapping and, after 1907, the maintenance of the log foundation of a cabin.

Rollandine Ruth Landergen, Rolland D. Landergen, A-29362 (July 17, 1963)

INDIAN LANDS

DESCENT AND DISTRIBUTION

Claims Against Estates

An Indian's written authorization for payment of her funds to a creditor, which has been filed with the

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Claims Against Estates--Continued

Bureau of Indian Affairs during the lifetime of the Indian and not revoked by the Indian or disapproved by the Bureau, need not be resubmitted by the creditor as the basis for a claim against the estate of the Indian after her death; and the authorization so filed removes it from the application of the probate regulation which prohibits the filing of claims against Indian estates after the conclusion of the probate hearing.

Estate of Mary Ramona Diserly Youpee Brown, IA-1294 (Apr. 15, 1963) 70 I. D. 142

Wills

Devises and bequests of restricted Indian property to a board of trustees of a foundation established to promote religious work among Indians are not invalid as an attempt to establish a private trust of restricted Indian property.

Estate of Lizzie Arthur, IA-1236 (Feb. 25, 1963) 70 I. D. 24

An Examiner of Inheritance who succeeds one who died subsequent to conducting hearings in a will contest but before entering an order approving the will or determining heirs must conduct new hearings before he can validly approve the will or determine heirs unless the parties stipulate the case may be decided on the basis of the evidence taken by the deceased Examiner.

Estate of Charles White Nez Perce Allottee No. 66, IA-754 (Mar. 27, 1963) 70 I. D. 102

Testimony of lay witnesses not present at the execution of the will, establishing that testator was in poor health, that he was unable to manage his property, that he customarily used intoxicants to excess, and that he appeared to be intoxicated at different times on the day the will was executed, does not meet the burden of proving testamentary incapacity placed upon contestants where testimony of scrivener and attesting witnesses, and the rationality of the will support a contrary finding.

Where a decedent, in the six-month period following a divorce, during which Oklahoma law prevented remarriage to any party other than the divorced spouse, executed a will devising property to "my wife"; his divorced spouse, in attempting to establish that an alleged subsequent marriage between herself and the decedent,

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Wills--Continued

during said period, revoked the will by operation of law, cannot, where circumstances rule out the possibility that any other former spouse was the intended devisee, successfully maintain the position that because she was not the decedent's wife at the time he executed the will, she was not provided for in the will.

Estate of Harris Eugene Russell Unallotted Osage Indian, IA-1275 (May 2, 1963) 70 I. D. 151

In approving an Indian will disposing of restricted property, the Secretary of the Interior is not bound by state law or a state court decree governing the disposition of unrestricted property under the will, and a hearing on the validity of the will with respect to the restricted property should be accorded interested parties.

Charles Clement Richard, IA-1260 (July 15, 1963)

A decision of an Examiner of Inheritance that a testator afflicted with senile dementia who prior to making the will had been adjudged insane and later placed under guardianship lacked testamentary capacity, will not be disturbed on appeal where evidence on the testator's competency when the will was made is conflicting.

Estate of Tsegetivo, A/K/A Chicken Tseventivo Deceased Allotted Bannock No. 1756, IA-1192 (Aug. 29, 1963)

LEASES AND PERMITS

Under the Act of August 9, 1955 (69 Stat. 539; 25 U.S.C., sec. 415), which authorizes the Indian owners of restricted tribally or individually owned lands to lease such lands, with the approval of the Secretary of the Interior, for a term of not to exceed twenty-five years "for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary," the phrase "specialized crops" is not one of limitation, and the Secretary is authorized to approve such leases if, in order to produce the crop or crops proposed to be grown, he determines that a substantial investment in the improvement of the land is necessary for that purpose and the lessee is required to make such an investment.

Long-Term Farming Leases of Indian Lands Under the Act of Aug. 9, 1955 (69 Stat. 539; 25 U.S.C., Sec. 415), as Amended, M-36651 (Apr. 8, 1963) 70 I. D. 119

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Minerals

The Annette Islands reserve in Alaska was specifically created as an Indian reservation by section 15 of the Act of March 3, 1891 (26 Stat. 1101; 48 U.S.C. sec. 358), and is leasable for mining purposes under the provisions of the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. sec. 396a-f).

Proposed Lease of Annette Islands Reserve for Metalliferous Mining, M-36658 (July 19, 1963) 70 I. D. 363

Oil and Gas

Lands in Alaska which have been withdrawn by Executive order for Indian purposes or for the use and occupancy of any Indians or tribe, may be leased for oil and gas development pursuant to the act of Mar. 3, 1927.

Oil and Gas Leasing on Lands Withdrawn by Executive Order for Indian Purposes in Alaska, M-36652 (May 14, 1963) 70 I. D. 166

INDIANS

GENERALLY

The allowance of an attorney's fee by an Examiner of Inheritance for legal services rendered in an Indian's restricted estate will not be disturbed on appeal where it appears that such allowance meets the test of reasonableness specified in the Departmental probate regulations.

Estate of Lucy Sixteen, IA-1324 (Dec. 20, 1963) 70 I. D. 531

IRRIGATION CLAIMS

GENERALLY

Under Public Works Appropriation Acts, an award may be made only upon a showing that the damage was the direct result of nontortious activities of employees of the Bureau of Reclamation.

A direct cause has been defined as a cause without which the injury would not have occurred, and which by itself is a self-sufficient cause of the injury.

Each claim must be considered on its own peculiar facts and merits. The payment of any claim does not necessarily assure the payment of another claim on the mere allegation that it is similar or identical.

Claim of Harold D. Jensen, TA-227 (Ir.) (Mar. 14, 1963) 70 I. D. 97

Since the criteria for an award are the same (although the personnel of different bureaus are involved) under the Public Works Appropriation Acts and under the Act dealing with damage caused by Indian irrigation projects, determinations made under one of these acts may be used as precedents for determining claims arising under the other act.

Claim of John C. Brock, TA-249 (Ir.) (Aug. 12, 1963) 70 I. D. 397

INJURY

Animals and Livestock

The loss of cattle which fall or wander into irrigation canals or other irrigation facilities cannot be considered to be the direct result of nontortious activities of officers or employees of the United States.

Claim of John C. Brock, TA-249 (Ir.) (Aug. 12, 1963) 70 I. D. 397

WATER AND WATER RIGHTS

Seepage

In dealing with subterranean water, it is rare that conclusions can be drawn with mathematical precision. Such precision is not necessary. Reasonable and logical conclusions can and must be drawn from the evidence presented, and a decision will then be rendered consistent with the preponderance of the evidence.

IRRIGATION CLAIMS--Continued

WATER AND WATER RIGHTS--Continued

Seepage--Continued

When a claim is made that seepage water from a Bureau of Reclamation irrigation structure has damaged private property, it is not necessary to a proper denial of the claim under the Public Works Appropriation Acts to have a finding as to the source of the water causing the damage. It is necessary only that there be a finding based on the evidence that the damage was not the direct result of nontortious activities of employees of the Bureau of Reclamation.

Claim of Harold D. Jensen, TA-227 (Ir.) (Mar. 14, 1963) 70 I. D. 97

MIGRATORY BIRD CONSERVATION ACT

GENERALLY

The proviso in section 1 of the Palisades Project Act prohibiting the development, operation, and maintenance of a wildlife management area as part of the project until authorized by Congress, was not intended to limit the general authority of the Secretary under the Migratory Bird Conservation Act to establish and develop refuges for migratory birds anywhere in the United States.

Section 6 of the Migratory Bird Conservation Act directs that no payment shall be made on areas acquired by purchase or rent until the title there to shall be satisfactory to the Attorney General.

Proposed Establishment of A Refuge for Migratory Birds At Grays Lake, Idaho, M-36664 (Dec. 19, 1963) 70 I. D. 527

MINERAL LANDS

GENERALLY

Section (a)(3) of the Act of Aug. 27, 1958 (72 Stat. 928, 43 U.S.C., sec. 852), does not authorize the selection of lands which have been probed by core drilling and extensive exploration work to the extent that the boundaries and quantity of a valuable deposit of mineral are well defined and the mineral within such deposit is known to be of such quality as to warrant expenditure of funds for extraction.

Utah Indemnity Selections, Cane Creek Potash Area, M-36645 (Dec. 17, 1962) 70 I.D. 71
See Attorney General Opinion, 70 I.D. 65 "To the Contrary."

Reconveyance of oil and gas mineral interests in acquired lands in the Grenada, Mississippi, Reservoir may be made under the act of August 31, 1957, subject to certain conditions to be set forth in the reconveyance upon a determination by the Department of the Army that such reconveyance is permissible.

Nora C. Hayward, A-29576 (Oct. 3, 1963)

LEASES

A lessee of mineral land within a national forest is properly required to agree to royalty rates for marketable minerals deemed by the Department of the Interior to be for the best interests of the United States.

American Zinc, Lead and Smelting Company, A-29096 (Mar. 12, 1963)

The conveyance of land to Boulder City from the United States by deed subject to existing leases, pursuant to the Boulder City Act of 1958, did not transfer to the City outstanding mineral leases in the absence of an assignment of the leases and a renewal of such a lease by this Department is proper.

Boulder City, A-29729 (Nov. 18, 1963)

Where a reduction in the royalty rates established for a preference right acquired lands mineral lease to be issued is requested on the basis of alleged higher capital and operating costs than those incurred in other acquired lands leases carrying the same royalty rates, the reduction will not be granted where a consideration of all factors indicate that the rates established are not excessive.

National Lead Company, A-29666 (Dec. 2, 1963)

MINERAL LANDS--Continued

MINERAL RESERVATION

When land within desert land entries is reported to be prospectively valuable for oil and gas before the entrymen submit final proof, the entries will be impressed with a reservation of oil and gas to the United States unless the entrymen contest the mineral classification and show that the classification is in error.

When land within desert land entries is subsequently reported to be prospectively valuable for oil and gas, the entrymen may show the nonmineral character of the land at any time before submission of final proof; failure to appeal from a decision of a land office which states that the land will be impressed with a reservation of the oil and gas will not affect the right to make such a showing.

Erma F. Andersen, Darl Andersen, A-29513 (July 5, 1963)

NONMINERAL ENTRIES

In order for a homestead entryman on the Kenai Peninsula in Alaska to be entitled to the grant of oil and gas deposits provided for in the act of September 14, 1960, compliance with the requirements of the homestead laws, except for actual submission of final proof, must have been made prior to July 23, 1957, and where the entryman's final proof did not show that one-eighth of the entry was cultivated prior to that time, there was not compliance with all the requirements for patent and the entryman was not entitled to the benefits of the 1960 act.

Wilford S. Jones, A-29320 (May 2, 1963)

Land valuable for gold is not subject to public sale.

Rosemon Willis, A-29538 (Aug. 27, 1963)

PROSPECTING PERMITS

An application for a mineral prospecting permit for acquired lands is properly rejected where the lands applied for are being administered by the Forest Service and that agency objects to approval of the application.

Antioch, Inc., A-29902 (Nov. 5, 1963)

MINERAL LEASING ACT

APPLICABILITY

An application for a coal prospecting permit under regulations issued pursuant to the act of Oct. 20, 1914, filed after the repeal of that act by the act of Sept. 9, 1959, is subject to rejection because of the cessation of authority of this Department to issue permits under the 1914 act; and, even though the 1959 act extended the provisions of the Mineral Leasing Act of Feb. 25, 1920, to Alaska, the land office did not have any duty or authority to consider the application as one under the 1920 act until some action was taken by the appellant to amend the application to come within that act.

Cripple Creek Coal Company, A-29564 (Oct. 11, 1963) 70 I.D. 451

MINERAL LEASING ACT FOR ACQUIRED LANDS

GENERALLY

The 1954 Multiple Mineral Development Act will not be construed as amending the provision of the Mineral Leasing Act for Acquired Lands excepting lands acquired for their mineral deposits from lease under that Act.

Arnold R. Gilbert, Belco Petroleum Corporation, A-29123 (Jan. 14, 1963)

The Department adheres to its previous decisions in Nettie M. Lewis et al., A-28535 (Jan. 27, 1961), Celia R. Kammerman, A-28827 (Aug. 3, 1962), and Jacob N. Wasserman, A-28880 (Sept. 21, 1962), that there appears to be no requirement for approval by the Bureau of the Budget of stipulations required by the Forest Service as a condition to the issuance of acquired land oil and gas leases on national forest land.

Rita Wasserman et al., A-29240, A-29266, A-29598 (Mar. 11, 1963)

MINERAL LEASING ACT FOR ACQUIRED LANDS --Continued

CONSENT OF AGENCY

An acquired lands oil and gas lease offer must be rejected when the agency having jurisdiction over the land will not consent to the issuance by this Department of a lease.

Duncan Miller, A-29582 (Aug. 2, 1963)

LANDS SUBJECT TO

Lands which were acquired by the Atomic Energy Commission for their uranium deposits are not subject to lease under the Mineral Leasing Act for Acquired Lands.

The 1954 Multiple Mineral Development Act will not be construed as amending the provision of the Mineral Leasing Act for Acquired Lands excepting lands acquired for their mineral deposits from lease under that Act.

The Secretary of the Interior has implied authority to lease acquired lands excepted from leasing under the Mineral Leasing Act for Acquired Lands to protect them from drainage where the mineral deposits are under the jurisdiction of this Department, but such lands will be leased by competitive bidding and noncompetitive offers for such lands are properly rejected.

Arnold R. Gilbert, Belco Petroleum Corporation, A-29123 (Jan. 14, 1963)

Land acquired for a railroad spur line to serve an Air Force Base is land set apart for military purposes and therefore excluded from leasing under the Mineral Leasing Act for Acquired Lands.

A. L. Green, A-29140 (Jan. 23, 1963)

Section 6 of the act of Feb. 28, 1958, does not give the Secretary of the Interior authority to issue oil and gas leases, with the concurrence of the Secretary of Defense, on acquired land set apart for naval purposes.

J. D. Simmons, A-29681 (Sept. 25, 1963)

MINERAL LEASING ACT FOR ACQUIRED LANDS --Continued

LANDS SUBJECT--Continued

Acquired lands situated within the limits of an incorporated city are not subject to leasing under the provisions of the Mineral Leasing Act for Acquired Lands.

Duncan Miller, A-29897 (Nov. 19, 1963)

Where there is an ambiguity in legislation dealing with the leasing of lands in Indian reservations set apart for agency or school purposes and where leases have been issued covering acquired lands of the United States situated in such reservations and set apart for school purposes, the Department is not required to cancel the outstanding leases in order to accommodate an offer to lease the lands under the Mineral Leasing Act for Acquired Lands.

Neil F. Stull, A-28965 (Dec. 3, 1963)

MINING CLAIMS

GENERALLY

The authority of the United States to proceed with the determination of the validity of a mining claim is not vitiated by a long delay between the initiation of the contest and the hearing on the ground that the further processing of the contest is barred by estoppel or laches because Government property is not to be disposed of contrary to law on account of the acquiescence, laches, or failure to act of its officers or agents.

United States v. William M. Barnett et al., A-29157 (May 13, 1963)

COMMON VARIETIES OF MINERALS

To satisfy the requirement for discovery on a placer mining claim located for decorative building stone and clay before July 23, 1955, it must be shown that the materials within the limits of the claim could have been extracted, removed, and marketed at a profit before that date and when such showing is not made the mining claim is properly declared null and void.

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Building stone suitable for construction purposes which is found in pleasing colors, which splits readily and can be polished satisfactorily, but can be used only for the same purposes as other available building stone is a common variety of building stone and not locatable under the mining laws since its special characteristics do not give it a special, distinct value.

Clay found on a mining claim which the claimant believes to be valuable but which laboratory tests show to be unsuitable for an oil-bleaching material or as a catalytic agent even with acid treatment to increase its absorbency cannot be regarded as an uncommon variety of clay on the basis of one sale for mixing in stone plaster.

United States v. Kelly Shannon et al., A-29166 (Apr. 12, 1963) 70 I.D. 136

In a contest challenging the validity of mining claims located for sand, gravel, and rock, the claims are properly held to be null and void on the basis of a showing of large quantities of usable sand, gravel, and rock on the contested claims where there is no showing that there is a present market for the materials found on those claims.

United States v. Joseph A. Schelden et al., A-29078 (Apr. 26, 1963)

A mining claim, the validity of which is challenged under section 3 of the act of July 23, 1955, is properly held to be null and void when the claimant's evidence shows that the great bulk of sales of stone from the claim are for ordinary construction purposes and that only two small sales of a better quality of the stone were made for lapidary purposes.

Where a mining claim contains a large deposit of quartz suitable for ordinary construction purposes but scattered in the deposit are small pockets of pink or rose quartz suitable for lapidary purposes, it is questionable whether the pockets can be considered as a separate deposit of an uncommon variety of stone apart from the general deposit of which they are a part.

Two sales of an uncommon variety of stone for $260 in a period of two years falls far short of of establishing that the stone constitutes a valuable mineral deposit which will establish the validity of a mining claim.

United States v. Frank Melluzzo et al., A-29074 (May 20, 1963) 70 I.D. 184

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Where there is no showing that there are within the limits of a mining claim deposits of sand and gravel in sufficient quantities to induce a prudent man to expend his labor and means with a reasonable prospect of developing a valuable operation, there has been no discovery within the meaning of the mining law.

United States v. Charles H. Henrikson and Oliver M. Henrikson, A-28763 (June 4, 1963) 70 I. D. 212

CONTESTS

Where, in contests brought to determine the validity of mining claims, the testimony of the parties is vague and unconvincing in certain respects, the case will be remanded for a further hearing, limited to those aspects of the case.

United States v. Robert E. Anderson, Jr., et al., A-28260 (Feb. 20, 1963)

A mining claimant has the burden of proving in a contest against his claim that a discovery has been made after the Government has made a prima facie case that the claim is invalid for want of a discovery of a valuable mineral deposit.

United States v. Kelly Shannon et al., A-29166 (Apr. 12, 1963) 70 I.D. 136

A mining claimant has the burden of proving, in a contest against his claim, that a discovery has been made, after the Government has made a prima facie case that the claim is invalid for want of a discovery of a valuable mineral deposit.

United States v. Robert G. and Orpha B. McMillan, A-29456 (July 26, 1963)

The Secretary of the Interior has clear authority to initiate contest proceedings to determine the validity of a mining claim even though an application for patent has been filed, notice of the application has been published, no adverse claim has been filed, and the purchase price has been paid.

United States of America v. Ross Chamberlin, A-29645 (Nov. 4, 1963)

MINING CLAIMS--Continued

CONTESTS--Continued

Action by the Bureau of Land Management in rejecting a mineral patent application and in declaring the mining claims in the application null and void is proper when the claimant fails to answer a contest complaint charging that the claims are invalid and the rules of practice provide that failure to answer will be taken as an admission of the charges.

The United States is not precluded from initiating a contest against the validity of a mining claim simply because a patent application for the claims, purchase money, and certain information required by the Bureau of Land Management have been filed by the claimant.

United States v. Bradley-Turner Mines, Inc., A-29813 (Nov. 19, 1963)

DESCRIPTION OF LAND

An application for an oil and gas lease covering unsurveyed public lands which fails to describe the lands by metes and bounds is fatally defective when the regulation in effect at the time required such description.

Prentiss E. Furlow, A-29585 (July 19, 1963)

DETERMINATION OF VALIDITY

A mining claim is properly declared null and void where evidence supports the conclusion that there has been no discovery of valuable mineral deposits on the claim such as would justify a person of ordinary prudence in the further expenditure of his time and means in an effort to develop a paying mine.

United States v. Joe Driear, A-28925 (Jan. 31, 1963) 70 I. D. 10

Although a mining claimant may not have any rights based on a location or amended location made subsequent to a withdrawal of the land, he is not precluded from establishing that he has possessory rights, as the successor in interest of an original locator, based on mining claims made and perfected prior to the withdrawal.

J. Everett Nelson, A-29174 (Feb. 4, 1963)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

It is proper for the United States to initiate a contest proceeding to determine the validity of a lode mining claim subsequent to condemnation by State proceedings of the land included in the claim.

United States v. Robert A. Mindte et al., A-29151 (Feb. 4, 1963)

Mining claims may be declared null and void if the claimants fail to appeal from or protest a default decision after notice of hearing on charges contesting the validity of the claims; and where the claimants acquiesce for twenty years in the decision declaring the claims null and void, the decision is conclusive and will not be reopened in the absence of a legal or equitable basis warranting reconsideration.

Langdon H. Larwill et al., A-28697 (May 16, 1963)

A determination that a mining claim is void from its inception because it was located after the withdrawal of the land from mineral location does not determine the validity of an alleged location made prior to the withdrawal on the same land.

Henry E. Covington, A-29495 (July 30, 1963)

No hearing is necessary to declare mining claims void ab initio where the records of the Department show that at the time of location of the claims the land was not open to such location.

Ernest Smith, A-29590 (Aug. 2, 1963)

The Secretary of the Interior has clear authority to initiate contest proceedings to determine the validity of a mining claim even though an application for patent has been filed, notice of the application has been published, no adverse claim has been filed, and the purchase price has been paid.

United States of America v. Ross Chamberlin, A-29645 (Nov. 4, 1963)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

The United States is not precluded from initiating a contest against the validity of a mining claim simply because a patent application for the claims, purchase money, and certain information required by the Bureau of Land Management have been filed by the claimant.

United States v. Bradley-Turner Mines, Inc., A-29813 (Nov. 19, 1963)

It is proper to declare mining claims null and void without a hearing where as a matter of record it appears that the claims were located on land that had previously been withdrawn for power purposes.

Where mining claims are declared null and void ab initio without a hearing because they were located on withdrawn land, the claimants are not precluded from establishing that the claims are simply continuations of valid claims which were located prior to the withdrawal and a hearing is not essential for that purpose.

Metaline Contact Mines et al., A-29707 (Dec. 11, 1963)

DISCOVERY

It is proper to reject an application for patent of a placer mining claim and to declare the claim null and void where the evidence presented in a contest proceeding fails to show a discovery of a valuable mineral deposit under the mining laws, the evidence merely showing the presence of gold in quantities insufficient to warrant a man of ordinary prudence to expend further time and money with a reasonable prospect of success in developing a paying mine.

United States v. Richard L. and Nellie V. Effenbeck, A-29113 (Jan. 15, 1963)

It is proper to declare a mining claim null and void where the evidence presented in a contest proceeding fails to show a discovery of a valuable mineral deposit under the mining laws, the evidence merely showing the presence of uranium in quantities insufficient to warrant a man of ordinary prudence to expend further time and money with a reasonable prospect of success in developing a paying mine.

The Department does not require the finding of a commercial ore body before finding that a valid discovery under the mining laws has been made.

United States v. Robert A. Mindte et al., A-29151 (Feb. 4, 1963)

MINING CLAIMS--Continued

DISCOVERY--Continued

To constitute a valid discovery upon a lode mining claim there must be a discovery on the claim of a lode or vein bearing mineral which would warrant a prudent man in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; it is not sufficient that the showing might warrant further exploration in the hope of finding a valuable deposit.

United States v. Estate of Carroll D. Murphy et al. A-29198 (Mar. 12, 1963)

To satisfy the requirement for discovery on a placer mining claim located for decorative building stone and clay before July 23, 1955, it must be shown that the materials within the limits of the claim could have been extracted, removed, and marketed at a profit before that date and when such showing is not made the mining claim is properly declared null and void.

A mining claimant has the burden of proving in a contest against his claim that a discovery has been made after the Government has made a prima facie case that the claim is invalid for want of a discovery of a valuable mineral deposit.

United States v. Kelly Shannon et al., A-29166 (Apr. 12, 1963) 70 I.D. 136

In a contest challenging the validity of mining claims located for sand, gravel, and rock, the claims are properly held to be null and void on the basis of a showing of large quantities of usable sand, gravel, and rock on the contested claims where there is no showing that there is a present market for the materials found on those claims.

United States v. Joseph A. Schelden et al., A-29078 (Apr. 26, 1963)

In a contest challenging the validity of his mining claim for lack of a discovery of a valuable mineral deposit, a mining claimant must sustain the validity of the claim by showing a discovery of valuable mineral which is sufficient to justify a person of ordinary prudence in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine.

United States v. William M. Barnett et al., A-29157 (May 13, 1963)

MINING CLAIMS--Continued

DISCOVERY--Continued

Two sales of an uncommon variety of stone for $260 in a period of two years falls far short of establishing that the stone constitutes a valuable mineral deposit which will establish the validity of a mining claim.

United States v. Frank Melluzzo et al., A-29074 (May 20, 1963) 70 I.D. 184

Where there is no showing that there are within the limits of a mining claim deposits of sand and gravel in sufficient quantities to induce a prudent man to expend his labor and means with a reasonable prospect of developing a valuable operation, there has been no discovery within the meaning of the mining law.

United States v. Charles H. Henrikson and Oliver M. Henrikson, A-28763 (June 4, 1963) 70 I.D. 212

After a hearing has been held in connection with a governmental contest to establish the invalidity of certain placer mining claims, there is no basis for ordering further proceedings in the case when the contestee had adequate opportunity to establish that there had been a discovery on the claim but the evidence at the hearing fails to show more than the presence of gold in quantities insufficient to warrant a man of ordinary prudence to expend further time and money with a reasonable prospect of success in developing a paying mine and that there had been much mining done on one of the claims years previous to the contest proceeding.

United States v. Sam Goehring, A-29407 (July 2, 1963)

A mining claimant has the burden of proving, in a contest against his claim, that a discovery has been made, after the Government has made a prima facie case that the claim is invalid for want of a discovery of a valuable mineral deposit.

It is proper to hold a placer mining claim null and void where the evidence presented in a contest proceeding fails to show a discovery of a valuable mineral deposit under the mining laws, the evidence merely showing the presence of gold in quantities insufficient to warrant a man of ordinary prudence to expend further time and money with a reasonable prospect of developing a valuable mine.

United States v. Robert G. and Orpha B. McMillan, A-29456 (July 26, 1963)

MINING CLAIMS--Continued

DISCOVERY--Continued

The fact that one is occupying public land and diligently working toward making discovery gives him certain possessory rights but not as against the United States, and the land that he is occupying may be withdrawn from location under the mining law so as to invalidate any mining claim on which a discovery is made after such withdrawal.

Ernest Smith, A-29590 (Aug. 2, 1963)

A mining claim is properly declared null and void when the evidence supports a finding that a valuable discovery has not been made within the limits of the claim.

United States of America v. Pearl Clarke, et al., A-29639 (Oct. 17, 1963) 70 I. D. 455

HEARINGS

After a hearing has been held in connection with a governmental contest to establish the invalidity of certain placer mining claims, there is no basis for ordering further proceedings in the case when the contestee had adequate opportunity to establish that there had been a discovery on the claim but the evidence at the hearing fails to show more than the presence of gold in quantities insufficient to warrant a man of ordinary prudence to expend further time and money with a reasonable prospect of success in developing a paying mine and that there had been much mining done on one of the claims years previous to the contest proceeding.

United States v. Sam Goehring, A-29407 (July 2, 1963)

A hearing is not required to make the determination that a mining location made after the land is withdrawn from mineral location is void from its inception.

Henry E. Covington, A-29495 (July 30, 1963)

MINING CLAIMS--Continued

HEARINGS--Continued

No hearing is necessary to declare mining claims void ab initio where the records of the Department show that at the time of location of the claims the land was not open to such location.

A mining claimant who is engaged in discovery work but has not made a discovery prior to the withdrawal of the land is not entitled to a hearing to show the extent of his work because such showing would serve no purpose.

Ernest Smith, A-29590 (Aug. 2, 1963)

A notice of hearing in a mining contest case which, in effect, incorporates the charges in the complaint that the land within the claim is nonmineral in character and that minerals have not been found within the limits of the claim in sufficient quantities to constitute a valid discovery sufficiently complies with the requirement in section 5 of the Administrative Procedure Act that a notice of hearing state the matters of fact and law asserted.

United States of America v. Pearl Clarke et al., A-29639 (Oct. 17, 1963) 70 I. D. 455

It is proper to declare mining claims null and void without a hearing where as a matter of record it appears that the claims were located on land that had previously been withdrawn for power purposes.

Where mining claims are declared null and void ab initio without a hearing because they were located on withdrawn land, the claimants are not precluded from establishing that the claims are simply continuations of valid claims which were located prior to the withdrawal and a hearing is not essential for that purpose.

Metaline Contact Mines et al., A-29707 (Dec. 11, 1963)

LANDS SUBJECT TO

Mining claims located on lands within a first-form reclamation withdrawal which were not open to mineral entry are properly declared null and void ab initio.

J. Everett Nelson, A-29174 (Feb. 4, 1963)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

A mining location made after the land is withdrawn from mineral location is void from its inception.

A determination that a mining claim is void from its inception because it was located after the withdrawal of the land from mineral location does not determine the validity of an alleged location made prior to the withdrawal on the same land.

Henry E. Covington, A-29495 (July 30, 1963)

A mining claim is properly declared null and void where the location was made at a time when the land embraced in the claim was temporarily withdrawn from location under the mining laws.

Ernest Smith, A-29590 (Aug. 2, 1963)

The status of a mining claim located on public land reserved for power purposes should be determined on the basis of the location of relocation upon which the claimant asserts his claim.

Duane U. Gaskell et al., A-29465 (Sept. 13, 1963)

Prior to passage of the act of Aug. 11, 1955, lands embraced in an existing powersite withdrawal were not open to mining location, and a mining claim located subsequent to a withdrawal of the land for powersite purposes, but prior to passage of the act, is null and void where the land embraced in the claim had not been restored to entry under section 24 of the Federal Power Act at the time of location.

Grant Green, A-29771 (Sept. 18, 1963)

A mining claim located on land subject to a first form reclamation withdrawal initiates no rights in the locator and is void from its purported inception.

LeRoy Otis Nauman, Leola Fern Nauman, A-29673 (Sept. 20, 1963)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Prior to passage of the act of Aug. 11, 1955, lands embraced in an existing powersite withdrawal were not open to mining location, and a mining claim located subsequent to a withdrawal of the land for powersite purposes, but prior to passage of the act, is null and void where the land embraced in the claim had not been restored to entry under section 24 of the Federal Power Act at the time of location.

Grant Green, A-29771 (Sept. 18, 1963)

A lode mining claim located on land withdrawn for powersite purposes is null and void where such location was made prior to the act of Aug. 11, 1955.

Frank W. Whitenack, A-29798 (Nov. 18, 1963)

LOCATION

A determination that a mining claim is void from its inception because it was located after the withdrawal of the land from mineral location does not determine the validity of an alleged location made prior to the withdrawal on the same land.

Henry E. Covington, A-29495 (July 30, 1963)

MILL SITES

Until the enactment of the act of Mar. 18, 1960, the location of a placer mining claim did not establish any right in the locator to locate a millsite in conjunction therewith; a placer mining claim located prior to May 29, 1928, did not establish any right in the locator to locate a mill site thereafter on land which was withdrawn from location or entry under the mining laws after that date.

Wiley Virgil Davis, A-29717 (Oct. 31, 1963)

MINING CLAIMS--Continued

MINERAL LANDS

Where a 10-acre placer claim includes land situated within three regular 10-acre subdivisions and a discovery has been made on the land in one 10-acre subdivision, it is not necessary to show that the portions of the claim in the other two 10-acre subdivisions are mineral in character in order to sustain the validity of the entire claim.

United States v. Charles H. Henrikson and Oliver M. Henrikson, A-28763 (June 4, 1963) 70 I. D. 212

PATENT

It is proper to reject an application for patent of a placer mining claim and to declare the claim null and void where the evidence presented in a contest proceeding fails to show a discovery of a valuable mineral deposit under the mining laws, the evidence merely showing the presence of gold in quantities insufficient to warrant a man of ordinary prudence to expend further time and money with a reasonable prospect of success in developing a paying mine.

United States v. Richard L. and Nellie V. Effenbeck, A-29113 (Jan. 15, 1963)

Mining claims may be declared null and void if the claimants fail to appeal from or protest a default decision after notice of hearing on charges contesting the validity of the claims; and where the claimants acquiesce for twenty years in the decision declaring the claims null and void, the decision is conclusive and will not be reopened in the absence of a legal or equitable basis warranting reconsideration.

Langdon H. Larwill et al., A-28697 (May 16, 1963)

An application for patent on a mining claim is properly rejected where, more than sixteen year before the application is filed, the claim was declared null and void and thereafter canceled, and proceedings leading to the cancellation will not be reopened many years after the decision became final in the absence of a compelling legal or equitable basis warranting reopening.

Wasatch Development Co. et al., A-28674 (May 16, 1963)

MINING CLAIMS--Continued

PATENT--Continued

Patent to a mining claim cannot be withheld where it is shown that the claim is still being worked and the sand and gravel therefrom are still being removed and disposed of at a profit in the current market upon the conjecture that very little sand and gravel still remain on the claim.

United States v. Charles H. Henrikson and Oliver M. Henrikson, A-28763 (June 4, 1963) 70 I. D. 212

It is proper to hold a placer mining claim null and void where the evidence presented in a contest proceeding fails to show a discovery of a valuable mineral deposit under the mining laws, the evidence merely showing the presence of gold in quantities insufficient to warrant a man of ordinary prudence to expend further time and money with a reasonable prospect of developing a valuable mine.

United States v. Robert G. and Orpha B. McMillan, A-29456 (July 26, 1963)

PLACER CLAIMS

A 10-acre placer claim consisting of a string of four contiguous 2-1/2-acre tracts straddling three regular 10-acre subdivisions is not thereby invalid as not being in conformity with the public land surveys.

United States v. Charles H. Henrikson and Oliver M. Henrikson, A-28763 (June 4, 1963) 70 I. D. 212

POSSESSORY RIGHT

Although a mining claimant may not have any rights based on a location or amended location made subsequent to a withdrawal of the land, he is not precluded from establishing that he has possessory rights, as the successor in interest of an original locator, based on mining claims made and perfected prior to the withdrawal.

J. Everett Nelson, A-29174 (Feb. 4, 1963)

The fact that one is occupying public land and diligently working toward making discovery gives him certain possessory rights but not as against the United States, and the land that he is occupying may be withdrawn from location under

MINING CLAIMS--Continued

POSSESSORY RIGHT

the mining law so as to invalidate any mining claim on which a discovery is made after such withdrawal.

A mining claimant who is engaged in discovery work but has not made a discovery prior to the withdrawal of the land is not entitled to a hearing to show the extent of his work because such showing would serve no purpose.

Ernest Smith, A-29590 (Aug. 2, 1963)

POWER SITE LANDS

Since lands in national forests which are included in roads, roadbeds, and rights-of-way are withdrawn from mineral entry and are not open to location, mining, and patenting under the mining laws, entry on such lands is not authorized by the act of Aug. 11, 1955, opening certain lands in power withdrawals to mineral entry, and an order under that act relating to placer mining on such lands is not authorized.

The fact that other remedies may exist against interference in the use of public land from placer mining operations does not preclude the prohibition of placer mining under the act of Aug. 11, 1955.

Permission to carry on placer mining operations on condition that the locator shall, following placer operations, restore the surface of the claim to the condition it was in immediately prior to those operations may be granted under the act of Aug. 11, 1955, where it appears that placer mining would not substantially interfere with other uses of the land for recreational purposes or for homesites since no actual plans for such other uses have been completed and such uses are not anticipated within the reasonably near future.

United States v. Paul F. and Adeline A. Cohan et al., A-28785 (May 20, 1963) 70 I. D. 178

The status of a mining claim located on public land reserved for power purposes should be determined on the basis of the location or relocation upon which the claimant asserts his claim.

Duane U. Gaskell et al., A-29465 (Sept. 13, 1963)

MINING CLAIMS--Continued

SPECIAL ACTS

Since lands in national forests which are included in roads, roadbeds, and rights-of-way are withdrawn from mineral entry and are not open to location, mining, and patenting under the mining laws, entry on such lands is not authorized by the act of Aug. 11, 1955, opening certain lands in power withdrawals to mineral entry, and an order under that act relating to placer mining on such lands is not authorized.

The fact that other remedies may exist against interference in the use of public land from placer mining operations does not preclude the prohibition of placer mining under the act of Aug. 11, 1955.

Permission to carry on placer mining operations on condition that the locator shall, following placer operations, restore the surface of the claim to the condition it was in immediately prior to those operations may be granted under the act of Aug. 11, 1955, where it appears that placer mining would not substantially interfere with other uses of the land for recreational purposes or for homesites since no actual plans for such other uses have been completed and such uses are not anticipated within the reasonably near future.

United States v. Paul F. and Adeline A. Cohan et al., A-28785 (May 20, 1963) 70 I. D. 178

SURFACE USES

A verified statement filed pursuant to section 5 of the act of July 23, 1955, asserting surface rights in mining claims which does not designate the section or sections of the public land survey which embrace most of the claims and contains only metes and bounds descriptions of such claims ties to points on the boundaries of certain sections fails to meet the statutory requirement that it "shall set forth *** [t]he section or sections" which embrace the claims and must be rejected as an incomplete statement as to such claims.

R. D. Compton, A-28927 (Jan. 31, 1963) 70 I. D. 12

WITHDRAWN LAND

Mining claims located on lands within a first-form reclamation withdrawal which were not open to mineral entry are properly declared null and void ab initio.

J. Everett Nelson, A-29174 (Feb. 4, 1963)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

Although a mining claimant may not have any rights based on a location or amended location made subsequent to a withdrawal of the land, he is not precluded from establishing that he has possessory rights, as the successor in interest of an original locator, based on mining claims made and perfected prior to the withdrawal.

J. Everett Nelson, A-29174 (Feb. 4, 1963)

Mining claims located within the boundaries of the Colville Indian Reservation subsequent to withdrawal of the reservation from all forms of entry or disposal under the public land laws, including the mining laws, by Order No. 19157, issued on September 19, 1934, are properly declared void ab initio.

Marion Judd, A-29237 (Mar. 1, 1963)

Since lands in national forests which are included in roads, roadbeds, and rights-of-way are withdrawn from mineral entry and are not open to location, mining, and patenting under the mining laws, entry on such lands is not authorized by the act of Aug. 11, 1955, opening certain lands in power withdrawals to mineral entry, and an order under that act relating to placer mining on such lands is not authorized.

United States v. Paul F. and Adeline A. Cohan et al., A-28785 (May 20, 1963) 70 I. D. 178

A mining location made after the land is withdrawn from mineral location is void from its inception.

Henry E. Covington, A-29495 (July 30, 1963)

Mining claims located on land withdrawn from mineral location are properly declared null and void, and a petition for restoration of the land from the withdrawal cannot be granted after title to all mineral deposits in the land has been restored to the Indian tribe for which the land was formerly reserved.

Edgar Rundle, A-29593 (Aug. 2, 1963)

A mining claim is properly declared null and void where the location was made at a time when the land embraced in the claim was temporarily withdrawn from location under the mining laws.

Ernest Smith, A-29590 (Aug. 2, 1963)

MINING CLAIMS--Continued

WITHDRAWN LANDS--Continued

A mining claim located on land subject to a first form reclamation withdrawal initiates no rights in the locator and is void from its purported inception.

LeRoy Otis Nauman, Leola Fern Nauman, A-29673 (Sept. 20, 1963)

Prior to passage of the act of Aug. 11, 1955, lands embraced in an existing powersite withdrawal were not open to mining location, and a mining claim located subsequent to a withdrawal of the land for powersite purposes, but prior to passage of the act, is null and void where the land embraced in the claim had not been restored to entry under section 24 of the Federal Power Act at the time of location.

Grant Green, A-29771 (Sept. 18, 1963)

A mining claim located on land withdrawn from all forms of appropriation under the public land laws, including the mining laws, confers no rights on the locator and is properly declared null and void; a restoration of the land from the withdrawal will permit location of a new mining claim but will not give validity to a void claim.

California Alluvial Mining Corporation, A-29806 (Nov. 13, 1963)

A lode mining claim located on land withdrawn for powersite purposes is null and void where such location was made prior to the act of Aug. 11, 1955.

Frank W. Whitenack, A-29798 (Nov. 18, 1963)

An application for the restoration to mineral location and entry of public land withdrawn for reclamation purposes is properly rejected when the Bureau of Reclamation has recommended against such action.

Walker Engineering Corporation, A-29833 (Nov. 26, 1963)

It is proper to declare mining claims null and void without a hearing where as a matter of record it appears that the claims were located on land that had previously been withdrawn for power purposes.

MINING CLAIMS--Continued

WITHDRAWN LANDS--Continued

Where mining claims are declared null and void ab initio without a hearing because they were located on withdrawn land, the claimants are not precluded from establishing that the claims are simply continuations of valid claims which were located prior to the withdrawal and a hearing is not essential for that purpose.

Metaline Contact Mines et al., A-29707 (Dec. 11, 1963)

MULTIPLE MINERAL DEVELOPMENT ACT

GENERALLY

The 1954 Multiple Mineral Development Act will not be construed as amending the provision of the Mineral Leasing Act for Acquired Lands excepting lands acquired for their mineral deposits from lease under that Act.

Arnold R. Gilbert, Belco Petroleum Corporation, A-29123 (Jan. 14, 1963)

NOTICE

The publication of an Executive Order in the Federal Register is constructive notice to the public of the contents thereof.

G. Scott Hammonds, A-29733 (Mar. 20, 1963)

When notice of a public sale of a rough, mountainous tract has been given by publication and posting, the sale will not be set aside because one interested in the sale did not receive personal notice of it.

NOTICE--Continued

Notice of an impending public sale by publication in a newspaper is adequate notice when the newspaper is one in circulation in the area in which part of the tract is located.

A statement by a Bureau employee that personal notice of a proposed public sale will be given to one is merely an extension of a courtesy and not the conferring of a right, since no law or regulation requires such personal notice.

Joseph Garcia Cholame Township Sportsmen's Association, A-29324, (Nov. 26, 1963)

OIL AND GAS

The act of May 11, 1938, repealed only those parts of the act of Mar. 3, 1927, which were inconsistent therewith, and did not affect the authority established in the earlier act to lease, for oil and gas development, lands withdrawn by Executive order for Indian purposes or for the use and occupancy of Indians.

Oil and Gas Leasing on Lands Withdrawn by Executive Order for Indian Purposes in Alaska, M-36652 (May 14, 1963) 70 I.D. 166

OIL AND GAS LEASES

GENERALLY

An applicant for an oil and gas lease on acquired land of the United States is not disqualified for the award of a lease because his attorney writes to a United States Senator concerning an appeal from a land office decision on the availability of the land for leasing and the Senator routinely refers the letter to the Bureau of Land Management for such favorable consideration as it may warrant and for a report.

Duncan Miller, A-29155 (Jan. 24, 1963)

OIL AND GAS LEASES --Continued

GENERALLY--Continued

In order for an oil and gas lessee to be entitled to the extension or suspension benefits provided by the act of September 21, 1959, or section 27(j) of the Mineral Leasing Act Revision of 1960, respectively, as to a given lease, the lease must have been included in a "proceeding" within the meaning of those acts, which entails at least some specific, direct action against the lease discernible from the departmental records, and there must have been a suspension by the Secretary of the lessee's rights under the lease pending a decision in the proceeding or a waiver of such rights by the lessee; a mere failure to take action to approve or deny a pending assignment of the lease prior to the expiration of its term is not sufficient to entitle the lessee to the extension benefits.

Martha Featherstone, A-29138 (Jan. 31, 1963)
70 I. D. 19

The Department adheres to its previous decisions in Nettie M. Lewis et al., A-28535 (Jan. 27, 1961), Celia R. Kammerman, A-28827 (Aug. 3, 1962), and Jacob N. Wasserman, A-28880 (Sept. 21, 1962), that there appears to be no requirement for approval by the Bureau of the Budget of stipulations required by the Forest Service as a condition to the issuance of acquired land oil and gas leases on national forest land.

Rita Wasserman et al., A-29240, A-29266, A-29598 (Mar. 11, 1963)

An oil and gas offer is properly rejected where the land applied for has been leased to a prior offeror and where the junior offeror charges that the senior offeror is disqualified for holding excess acreage but fails to substantiate the charge or to show enough to warrant the Department to investigate the charge.

Miriam Kvetensky, A-29241 (Mar. 13, 1963)

Under the Department's regulations relating to grants to the State of Alaska, an oil and gas lease offer must be rejected when approval is given to a subsequently filed selection of land for the University of Alaska

Violet Goresen et al., A-29268 (Apr. 24, 1963)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

The extension provided for in section 4(d) of the Mineral Leasing Act Revision of 1960 applies to oil and gas leases extended beyond the five-year extended period by reason of a partial assignment, since the words "primary term," as used in that section, have been interpreted to mean all periods in the life of the lease prior to its extension by reason of the production of oil and gas in paying quantities, and an oil and gas offer filed when the lease has been extended pursuant to that section is properly rejected.

Dona M. Mohan, A-29304 (May 3, 1963)

When a Departmental regulation is inconsistent with, and without the provisions of, the law, it is invalid and will not be followed.

Continental Oil Company, Reversal Approved by Secretary May 15, 1963 70 I. D. 473

The inclusion of an oil and gas lease offer in a drawing to determine the first qualified offer does not signify the validity of the offer.

Duncan Miller, A-29521 (Aug. 29, 1963)

When a drawing held to determine the priority of conflicting, simultaneously-filed offers erroneously omits some of these offers, the drawing is properly declared null and void and the priority determined therein is of no effect and the priority of all offers is to be determined by another drawing including all the eligible offers.

Max H. Christensen, A-29703 (Sept. 17, 1963)

A drawing to determine the priority of conflicting, simultaneously filed noncompetitive oil and gas lease offers is properly vacated and a new drawing held when it is ascertained that one such offer was improperly excluded from the drawing.

Leonard H. Treiman, A-29579 (Oct. 4, 1963)

A time limit imposed upon an oil and gas lease offeror for furnishing a bond to protect the owner of surface rights to the land which time limit is not required by statute or regulation may be waived even though there is pending a junior offer for the land.

Where the 30-day period for filing a bond in connection with an oil and gas offer expires on a Saturday and the offeror has by regulation until the following Monday to file the bond, and a letter written by the land office on Monday modifying the time requirement refers to the fact that the 30-day period has expired, it is more

OIL AND GAS LEASES--Continued

GENERALLY--Continued

reasonable to assume that the letter was written on the assumption that the 30-day period had expired on Saturday than to assume that it was written after 3 p.m. on Monday in awareness of the fact that the 30-day period had expired at that time.

Halvor F. Holbeck, A-29595 (Oct. 9, 1963)

ACQUIRED LANDS LEASES

The Secretary of the Interior has implied authority to lease acquired lands excepted from leasing under the Mineral Leasing Act for Acquired Lands to protect them from drainage where the mineral deposits are under the jurisdiction of this Department, but such lands will be leased by competitive bidding and noncompetitive offers for such lands are properly rejected.

Arnold R. Gilbert, Belco Petroleum Corporation, A-29123 (Jan. 14, 1963)

An offer to lease acquired land for oil and gas purposes is properly rejected when in the description of the land contained in such offer, a deviation of a portion of the boundary which does not conform to the public land survey is tied to a quarter-quarter section corner and not to an established survey corner, which term includes township corners, section corners, quarter-section corners and meander corners.

Jack S. Stanley, A-29148 (Jan. 24, 1963)

An oil and gas lease offer, whether for public land or acquired land, which was filed before the amendment of the Mineral Leasing Act on September 2, 1960, and which was still pending at that time became subject to the act of September 2, 1960, so that the offeror is properly required to consent to the issuance of a lease subject to the terms prescribed by the amendatory act.

Lucille S. West, Duncan Miller et al., A-29242 et al. (Feb. 25, 1963)

OIL AND GAS LEASES --Continued

ACQUIRED LANDS LEASES--Continued

A noncompetitive offer to lease acquired land of the United States for oil or gas purposes which does not include a metes and bounds description of the land to the extent that the boundaries of the land sought for leasing do not conform to the public land survey is properly rejected.

Jack J. Spielberg, A-29203 (Mar. 18, 1963)

An acquired lands lease offer filed for lands leasable only under the Mineral Leasing Act of 1920 must be rejected.

Ruth G. Strom Administratrix of the Estate of Ted R. Strom T. Miller Gordon, A-29120, A-29179 (Mar. 21, 1963)

Under Louisiana law, the reservation by a donor of mineral rights in land donated to the United States creates only a servitude in the land which is extinguished if not exercised by the donor within ten years, even though the reservation is made for a period in excess of ten years, provided that the mineral rights have vested in the United States prior to the applicability of Act 315, La. Stat. (1940).

When mineral rights on acquired Louisiana land vest in the United States by nonuser, the rights are subject to an oil and gas lease offer.

Estate of Edwin W. Stockmeyer, Deceased Charles J. Babington, A-29233 (Mar. 26, 1963)

An oil and gas lease offer for unsurveyed, acquired land which fails to include a metes and bounds description of the land sought for leasing but describes the land by tract numbers is not defective for failure to include a metes and bounds description, with the courses and distances between successive angle points on the boundary, unless the deed under which the land was acquired fails to include such a description.

An oil and gas lease offer for unsurveyed acquired land is not defective because it is not accompanied by a map or plat showing the location of the land applied for within the administrative unit or project of which it is a part, but the offeror may be required to submit a satisfactory showing of such a map or plat.

Hope Natural Gas Company, A-29371 (June 25, 1963) 70 I.D. 228

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

Where a partial assignment of an acquired lands oil and gas lease is timely filed but is not accompanied by the statement of the assignee as to whether he is the sole party in interest in the assignment, as required by regulation, and such statement is not filed until after the expiration of the lease, approval of the assignment is properly refused.

Robert L. Smart et al., A-29677 (July 26, 1963)
70 I. D. 383

An oil and gas lease offer for acquired land is properly rejected when the file contains only six copies of the offer and the offeror is unable to prove that she filed seven copies as required by the applicable regulation and lease form.

Joan Witmer, A-29542 (July 31, 1963)

An oil and gas lease offer for acquired land which was filed before the amendment of the Mineral Leasing Act on Sept. 2, 1960, and which was still pending at that time became subject to the act of Sept. 2, 1960, so that the offeror is properly required to consent to the issuance of a lease subject to the terms prescribed by the amendatory act.

Duncan Miller, A-29633 (Sept. 5, 1963)

Section 6 of the act of Feb. 28, 1958, does not give the Secretary of the Interior authority to issue oil and gas leases, with the concurrence of the Secretary of Defense, on acquired land set apart for naval purposes.

J. D. Simmons, A-29681 (Sept. 25, 1963)

An oil and gas lease offer for unsurveyed acquired land is not defective because it is not accompanied by a map or plat showing the location of the land applied for within the administrative unit or project of which it is a part, nor need the offeror submit a satisfactory showing of such a map or plat when maps are on file in Forest Service offices.

Mrs. Rita Wasserman, A-29668 (Sept. 30, 1963)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

Oil and gas lease offers for public or acquired lands which were filed before the amendment of the Mineral Leasing Act by the act of Sept. 2, 1960, and which are still pending are subject to the act of Sept. 2, 1960, and offerors thereunder are properly required to consent to leases subject to the terms of the act of Sept. 2, 1960.

Duncan Miller, A-29921, A-29922 (Nov. 26, 1963)

An oil and gas lease offer for acquired land filed before the amendment of the Mineral Leasing Act on Sept. 2, 1960, which was still pending at that time, became subject to the act of Sept. 2, 1960, so that the offeror is properly required to consent to the issuance of a lease subject to the terms prescribed by the amendatory act.

Duncan Miller, A-29697 (Dec. 4, 1963)
70 I. D. 512

An oil and gas lease offer for acquired land filed before the amendment of the Mineral Leasing Act on Sept. 2, 1960, which was still pending at that time, became subject to the act of Sept. 2, 1960, so that the offeror is properly required to consent to the issuance of a lease subject to the terms prescribed by the amendatory act.

Duncan Miller, A-29791 (Dec. 11, 1963)

ACREAGE LIMITATIONS

An oil and gas offer is properly rejected where the land applied for has been leased to a prior offeror and where the junior offeror charges that the senior offeror is disqualified for holding excess acreage but fails to substantiate the charge or to show enough to warrant the Department to investigate the charge.

Miriam Kvetensky, A-29241 (Mar. 13, 1963)

APPLICATIONS

An oil and gas lease offer is properly rejected when it is not accompanied by the statement or statements of interests required by departmental regulation and such statement or statements are not thereafter filed within the 15-day period allowed by the regulation.

Gerald Breslauer, A-29129 (Jan 10, 1963)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

An oil and gas lease offer is properly rejected when the offeror fails to file the requisite number of copies of his offer within the 30-day period allowed by departmental regulation for filing such copies without loss of priority; the fact that the offer was filed under the procedure specified in 43 CFR, 1961 Supp., 192.43 does not cure the defect in the offer resulting from lack of the proper number of copies.

E. A. Culbertson and Wallace W. Irwin, A-29109 (Jan. 14, 1963)

A protest against issuance of an oil and gas lease to an offeror who filed his offer after the relinquishment of a prior lease on the land is properly rejected where the protest is based simply on an irresponsible charge that an iniquitous relationship existed between the offeror and former lessee.

Duncan Miller, A-29190 (Jan. 29, 1963)

It is proper to reject an offer for a noncompetitive oil and gas lease where the lands applied for are (1) in a producing lease, or (2) in a lease which was, during its extended term, further extended by reasons of a discovery made on a lease out of which the extended lease was segregated by partial assignment.

Duncan Miller, A-28709 (Jan. 31, 1963)
70 I. D. 1

An oil and gas lease offer filed before the amendment of the Mineral Leasing Act on September 2, 1960, which is pending thereafter is subject to the amendatory act and the offeror is, therefore, properly required to consent to the terms of a lease as required by the act of September 2, 1960.

Duncan Miller, A-29231 (Feb. 5, 1963)

An oil and gas lease offer, whether for public land or acquired land, which was filed before the amendment of the Mineral Leasing Act on September 2, 1960, and which was still pending at that time became subject to the act of September 2, 1960, so that the offeror is properly required to consent to the issuance of a lease subject to the terms prescribed by the amendatory act.

Lucille S. West, Duncan Miller et al., A-29242 et al. (Feb. 25, 1963)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

The mere filling of an offer to lease land for oil and gas purposes creates no vested right in the land.

John R. Roderick and C. Calvert Knudsen, A-29044 (Mar. 1, 1963)

If the signature of the person signing an oil and gas lease offer does not appear on all of the copies of the offer required by departmental regulations, the offer will be rejected.

Senemex, Inc., A-29271 (Mar. 15, 1963)

An oil and gas lease offer which does not comply with a mandatory requirement of the regulations for filing a sole party in interest statement must be rejected without priority accruing until such time as the defect is cured.

Raymond W. Russ, A-29294 (Mar. 18, 1963)

A junior oil and gas lease offer is properly rejected even though the prior offer is filed by one who relinquishes his lease on the same land or by one who knew a previous lease of the land was to be relinquished and filed his offer in reliance on such relinquishment.

Duncan Miller, A-29291 (Mar. 20, 1963)

An oil and gas lease offer filed for lands covered by outstanding leases must be rejected.

An oil and gas lease offer filed for lands covered by a prior offer on which a lease is issued must be rejected.

An acquired lands lease offer filed for lands leasable only under the Mineral Leasing Act of 1920 must be rejected.

Ruth G. Strom Administratrix of the Estate of Ted R. Strom T. Miller Gordon, A-29120, A-29179 (Mar. 21, 1963)

When a drawing to determine priority among simultaneously filed conflicting oil and gas lease offers is conducted in manner contrary to the provisions of the pertinent regulation and the order directing the drawing, it must be vacated and a new drawing held.

An oil and gas lease offer filed by one acting as an agent for the offeror without an accompanying statement of any possible interest of the agent in the offer or prospective lease as required by the pertinent regulation 43 CFR 192.42(e)(4) earns no priority and must be rejected.

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Where several offerors for an oil and gas lease for the same land each enter into an agreement with an agent who is to have at least a 50 percent interest in any lease issued and who is to have substantial control over the lease, the agent is a real party in interest in each offer so that he, in a drawing held to determine priority among these and other conflicting offers has more than one chance to prevail, a fact which disqualifies all offers so affected from gaining any priority from the drawing.

Evelyn R. Robertson et al., Duncan Miller, A-29251 (Mar. 21, 1963)

Where departmental decisions have established that over a period of time an offeror has so authorized another to act for him on a continuing basis in relation to filing oil and gas lease offers that the latter is an agent of the former within the meaning of the pertinent regulation, an offer filed by the offeror during that period as to which the other has described himself as an agent is properly rejected when the offer is filed without an accompanying statement of any possible interest of the agent in the offer or prospective lease as required by regulation 43 CFR 192.42(e)(4).

Charles B. Gonsales, A-29010 (Mar. 27, 1963)

Where a Departmental regulation requires that the filing fee due in connection with a request for a 5-year extension of an oil and gas lease be paid before a certain date, a check for the filing fee (and rental) filed before, but erroneously dishonored by the drawee bank after, the pertinent date will be held to have been paid within the prescribed time.

Duncan Miller, A-28657 (Mar. 29, 1963) 70 I. D. 113

A noncompetitive offer to lease for oil and gas purposes public land upon which an earlier lease has terminated by operation of law at the expiration of the lease term, which offer is filed in advance of the period for simultaneous filing of offers announced by the land office as provided in the departmental regulations, is properly rejected.

Thor-Westcliffe Development, Inc., A-29338, A-29520, A-29931 (Apr. 11, 1963) 70 I. D. 134

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

It is proper to reject an offer for an oil and gas lease filed on behalf of a corporation where the offer is signed by one not shown to be an officer of the corporation authorized to act on behalf of the corporation and is not accompanied by the separate statements of interest required where an offer is signed by an agent or attorney in fact.

United States Smelting Refining and Mining Company A-29201, A-29227 (Apr. 23, 1963)

An oil and gas lease offer filed for lands noted on the land office records as being within an existing oil and gas lease must be rejected regardless of whether the lease is void or voidable as the lands do not become available for leasing until the termination of the lease is noted on the land office records.

United Technical Industries, Inc., (Formerly Larsen Industries, Inc.) et al., A-29406 (Apr. 24, 1963)

When the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that land in a wildlife refuge is closed to oil and gas leasing, it is proper to reject an oil and gas lease offer for such land even though the land sought was open to oil and gas leasing when the offer was filed.

Duncan Miller, A-29340 (Apr. 29, 1963)

The extension provided for in section 4(d) of the Mineral Leasing Act Revision of 1960 applies to oil and gas leases extended beyond the five-year extended period by reason of a partial assignment, since the words "primary term," as used in that section, have been interpreted to mean all periods in the life of the lease prior to its extension by reason of the production of oil and gas in paying quantities, and an oil and gas offer filed when the lease has been extended pursuant to that section is properly rejected.

Dona M. Mohan, A-29304 (May 3, 1963)

Where the regulation in effect when an oil and gas lease offer is filed in the name of a partnership requires a certified copy of the articles of association and showings as to the qualifications of the member partners to accompany the offer, the mere reference by serial number to another case record where showings have been filed is not adequate and the offer is properly rejected.

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

The inclusion of offers in drawings simply establishes the order in which they will be considered and does not constitute a determination that a given offer is valid or waive any defect in such offer; thus a defective offer drawing first priority must be rejected.

George N. Keyston, Jr., Ltd., A-29133, A-29524 (May 7, 1963) 70 I. D. 156

The rejection of an offer for failure to comply with the 640-acre minimum limitation because nonnavigable river bed lands adjacent to the public land applied for were available for lease will be affirmed where appellant does not show that the river bed lands were not available for lease, as an offer for lease under the Mineral Leasing Act will not be accepted as an offer for the Government's riparian rights to the river bed lands unless such lands have been properly described and rentals submitted for them.

Clayton Phebus, 48 L. D. 128 (1921); A. W. Glassford et al., 56 I. D. 88 (1937); Associate Solicitor's opinion M-36512 (July 29, 1958), overruled to extent inconsistent.

Emily K. Connell, A-29176 (May 7, 1963) 70 I. D. 159

Where a departmental regulation requires that advance rental be submitted with an offer to lease for oil and gas, a check for the required rental submitted with the offer which is erroneously dishonored by the drawee bank will be held to have been properly filed.

An oil and gas lease offer filed before the amendment of the Mineral Leasing Act by the act of Sept. 2, 1960, and still pending, is subject to that act and the offeror is properly required to subject his lease to its terms.

Duncan Miller, A-29278 (May 13, 1963)

An oil and gas lease offer for separate tracts of land comprising less than 640 acres is properly rejected as to one tract that adjoins land which was available for leasing at the time the offer was filed but was not included in the offer but must be accepted as to another tract entirely surrounded by land not available for leasing.

James P. Witmer, A-29378 (June 7, 1963)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

An oil and gas lease offer is properly rejected after a lease has been issued to a properly qualified senior offeror.

Harold Ladd Pierce, A-29225 (June 10, 1963)

An oil and gas lease offer does not come within the exception to the 640-acre minimum limitation pertaining to lands surrounded by lands unavailable for leasing if there were river bed lands available for leasing adjacent to those applied for when the offer was filed.

Sanemex, Inc., A-29195 (June 10, 1963)

A description of the "SW1/4, SW1/4" of a section of public land in an oil and gas lease offer must be read as a designation of the "SW1/4 and the SW 1/4" and not of the "SW1/4SW1/4" merely because, so read, it leads to duplication in the land applied for, and the offer is properly rejected where the rental payment is deficient by more than 10 percent from the rental required for the land as literally described.

A land office employee has no authority or duty to alter an erroneous description of land in an oil and gas lease offer in order to make it a valid offer.

Joe Bart Moore, A-29361 (July 1, 1963)

When the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that public lands defined as "coordination lands" are closed to oil and gas leasing, it is proper to reject an oil and gas lease offer for such land.

W. Argyle Nelson, Shell Oil Company, A-29290 (July 2, 1963)

A lessee of an oil and gas lease who relinquishes his lease is not thereby disqualified from applying for a new lease of the same lands, nor is one disqualified who has knowledge of the relinquishment and applies as soon as the land becomes available for leasing.

Duncan Miller, A-29574 (July 19, 1963)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

An oil and gas lease offer is properly rejected when the land applied for is included in an existing lease issued pursuant to a properly qualified prior offer.

There is no prohibition against an offeror's filing an offer for a lease on one day and then filing a second offer for the same land on a succeeding day, where both offers are not involved in a simultaneous filing situation.

Duncan Miller, A-29426 (July 22, 1963)

A noncompetitive offer for an oil and gas lease is properly rejected when it is filed for land in an expired lease but before the land is made available for filing pursuant to 43 CFR 192.43.

R. M. Young, Jr., Danite Corporation, A-29519 (July 22, 1963)

A junior oil and gas lease offer is properly rejected even though the prior offer is filed by one who relinquished his lease on the same land or by one who knew a previous lease of the land was to be relinquished and filed his offer in reliance on such relinquishment.

Duncan Miller, A-29489 (July 26, 1963)

An oil and gas lease offer for acquired land is properly rejected when the file contains only six copies of the offer and the offeror is unable to prove that she filed seven copies as required by the applicable regulation and lease form.

Joan Witmer, A-29542 (July 31, 1963)

An oil and gas lease offer for acquired land which was filed before the amendment of the Mineral Leasing Act on Sept. 2, 1960, and which was still pending at that time became subject to the act of Sept. 2, 1960, so that the offeror is properly required to consent to the issuance of a lease subject to the terms prescribed by the amendatory act.

Duncan Miller, A-29633 (Sept. 5, 1963)

Oil and gas lease offers which do not acquire first priority in a drawing of simultaneously-filed offers may be conditionally rejected, subject to reinstatement in the event offers with higher priorities do not result in the award of a lease.

Theodore R. Barker, A-29531 (Sept. 17, 1963)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

When a drawing held to determine the priority of conflicting, simultaneously-filed offers erroneously omits some of these offers, the drawing is properly declared null and void and the priority determined therein is of no effect and the priority of all offers is to be determined by another drawing including all the eligible offers.

Max H. Christensen, A-29703 (Sept. 17, 1963)

An oil and gas lease offer will be rejected when the land applied for is not available for leasing because it is at the time of application included in an existing lease.

George W. Denkhaus, A-29614 (Sept. 17, 1963)

An oil and gas lease offeror's unfamiliarity with the requirements of the oil and gas lease regulations affords no basis for waiving those requirements and where such an offeror fails to comply with a mandatory provision thereof his offer must be rejected.

Robert M. Henderson, A-29669 (Sept. 17, 1963)

The responsibility of furnishing a proper and adequate description of lands in an oil and gas lease offer is upon the applicant and cannot be shifted by him to land office personnel by his filing a document which purports to be an amendment of the land description but which merely attempts to authorize the land office personnel to describe the offered lands in a way acceptable to them and which would thus be agreeable to him.

Duncan Miller, A-29698 (Sept. 18, 1963)

Where an offer to lease lands cannot be accepted because the lands are not available for leasing, the offer will be rejected and not held in suspense until the land may become available for leasing.

Edwin D. Warren, A-29720 (Sept. 24, 1963)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Until a land office or Director's decision rejecting an oil and gas lease offer becomes final or an appeal therefrom is taken, the defect in the offer may be cured by the offeror and considered further by the office in which the case is pending; however, priority of filing of the offer will be as of the date of the curative action rather than the original date of the filing of the offer.

M. J. Stansbury, A-29699 (Sept. 25, 1963)

A drawing to determine the priority of conflicting, simultaneously filed noncompetitive oil and gas lease offers is properly vacated and a new drawing held when it is ascertained that one such offer was improperly excluded from the drawing.

Leonard H. Treiman, A-29579 (Oct. 4, 1963)

An oil and gas lease offer for separate tracts comprising less than 640 acres is properly allowed as to one tract which is surrounded by land not available for leasing and properly rejected as to another tract which adjoins land that was available for leasing when the offer was filed but was not included in the offer.

George E. Conley, A-29634 (Oct. 18, 1963)

An oil and gas noncompetitive lease offer filed during a period for filing simultaneous offers for lands formerly in terminated leases is properly rejected when it fails to include the section number of the land applied for in the application, in accord with regulations 43 CFR 192.42(g)(1)(i) and 192.42a(a); the fact that the offer was filed under the procedure specified in 43 CFR 192.43 does not cure the defect in the offer resulting from lack of the section number of the land applied for.

Duncan Miller, A-29672 (Nov. 1, 1963)

When a drawing to determine priority among simultaneously filed conflicting oil and gas lease offers is partially vacated because of an omitted offer and a second drawing is held to determine priority among the offers for the land embraced in the omitted offer, the priority of offers for lands included in the first drawing but not in the omitted offer will not be affected by the second drawing.

R. Donald Jones, A-29631 (Nov. 4, 1963)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

An oil and gas lease offer filed for lands noted on the land office records as being within existing oil and gas leases must be rejected regardless of whether the leases are valid, void, or voidable as the lands do not become available for leasing until the termination of the leases is noted on the land office records.

If lands are within an existing reservoir right-of-way when an oil and gas lease offer filed under the Mineral Leasing Act of 1920 is filed, the offer must be rejected as the oil and gas deposits in such a right-of-way may be leased only as prescribed by the act of May 21, 1930.

Jay P. Nielson, A-29743 (Nov. 5, 1963)

A charge of error in the issuance of an oil and gas lease in response to an offer filed at 9:30 a.m. at a time when the rules of the Department permitted the filing of documents at all hours that the land offices were open for business is properly rejected.

A charge of error in the issuance of an oil and gas lease in response to an offer filed within minutes after the notation upon the tract book of the availability of the land for leasing because of such filing is properly rejected.

Duncan Miller, A-29845 (Nov. 5, 1963)

When copies of an oil and gas lease offer in the number specified in the applicable regulation are prepared on the proper form and in one operation by the use of a typewriter and carbon paper, the offer is not to be rejected because some of the copies are found to be illegible.

A. M. Culver, John F. Partridge, Jr., and Duncan Miller, A-29494, A-29522, A-29692 (Nov. 14, 1963) 70 I.D. 484

It is proper to require one making an oil and gas lease offer to consent to stipulations required by by the public land order controlling the use and disposition of the land applied for.

Duncan Miller, A-29701 (Nov. 15, 1963)

Where oil and gas leases were extended to Jan. 31, 1960, the land in the leases became available for filing thereafter only in accordance with the procedure set forth in 43 CFR 192.43, even though the leases may have been improperly extended and the leases would otherwise have expired at a date prior to the adoption of 43 CFR 192.43.

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

An extension of an oil and gas lease granted by a competent official of the Department of the Interior, though granted erroneously, segregates the land embraced in the lease and prevents initiation of rights by other lease applicants so long as it remains uncanceled of record.

H. G. Jeffrey, A-29779 (Nov. 18, 1963)

An oil and gas lease offer for land formerly included in a terminated lease is properly rejected when, at the time the offer is filed, the land has not yet been posted as available for leasing.

Louise Safarik, A-29919 (Nov. 26, 1963)

Oil and gas lease offers for public or acquired lands which were filed before the amendment of the Mineral Leasing Act by the act of Sept. 2, 1960, and which are still pending are subject to the act of Sept. 2, 1960, and offerors thereunder are properly required to consent to leases subject to the terms of the act of Sept. 2, 1960.

Duncan Miller, A-29921, A-29922 (Nov. 26, 1963)

Where oil and gas lease offers do not draw first priority in a drawing of simultaneously-filed offers, they may be conditionally rejected, subject to reinstatement in the event offers with higher priorities in the drawing do not ripen into leases.

An offeror whose offer does not draw first priority in a drawing and whose offer is conditionally rejected subject to reinstatement in the event offers with higher priorities in the drawing do not ripen into leases need not appeal from the conditional rejection in order to preserve the priority of his offer.

Ann H. Babington, A-29679 (Nov. 26, 1963)

Where oil and gas lease offers do not draw first priority in a drawing of simultaneously-filed offers, they may be conditionally rejected, subject to reinstatement in the event offers with higher priorities in the drawing do not ripen into lesses.

An offeror whose offer does not draw first priority in a drawing and whose offer is conditionally rejected subject to reinstatement in the event

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

offers with higher priorities in the drawing do not ripen into leases need not appeal from the conditional rejection in order to preserve the priority of his offer.

Where the Bureau of Land Management determines, as the result of protests lodged against an offer drawing first priority in a drawing, that the land sought by the first applicant is not adequately described and rejects that offer, it is not incumbent upon the Bureau to determine at that time who, among the several offerors who participated in the drawing, is entitled to receive a lease on that land.

Katherine M. Barker, A-29566 (Nov. 26, 1963)

An oil and gas lease offer for acquired land filed before the amendment of the Mineral Leasing Act on Sept. 2, 1960, which was still pending at that time, became subject to the act of Sept. 2, 1960, so that the offeror is properly required to consent to the issuance of a lease subject to the terms prescribed by the amendatory act.

An amendment of an oil and gas offer to change the description of land sought for leasing to include the correct designation of a legal subdivision owned by the United States within a reservoir area in place of a previous designation of a subdivision not within the reservoir area and not owned by the United States should not be rejected as a substitution of one tract of land for another which requires the filing of a new offer, where it appears that the offeror intended originally to apply for the land described in the amendment.

Duncan Miller, A-29697 (Dec. 4, 1963)
70 I.D. 512

Where an offer for a noncompetitive oil and gas lease filed prior to Sept. 2, 1960, is accepted after that date without first having secured from the offeror his consent to an amendment of the lease terms in accordance with the amendments required by the act of Sept. 2, 1960, the issuance of the lease should be rescinded and the offeror required to file his consent prior to acceptance of the offer.

Duncan Miller, A-29694 (Dec. 5, 1963)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

An oil and gas lease offer for acquired land filed before the amendment of the Mineral Leasing Act on Sept. 2, 1960, which was still pending at that time, became subject to the act of Sept. 2, 1960, so that the offeror is properly required to consent to the issuance of a lease subject to the terms prescribed by the amendatory act.

An amendment of an oil and gas offer to change the description of land sought for leasing to include a proper designation of two separate subdivisions of the same section instead of a single, smaller subdivision should not be rejected as a substitution of one tract of land for another which requires the filing of a new offer where it appears that the offeror intended originally to apply for the land described in the amendment.

Duncan Miller, A-29791 (Dec. 11, 1963)

ASSIGNMENTS OR TRANSFERS

Where a lessee has received notice that a partial assignment of his lease has been approved at least two weeks prior to its anniversary date and that the segregated leases will be extended beyond that date, the retained lease automatically terminates when he does not pay the rental for it in full on or before the anniversary date.

John H. and Pauline V. Trigg, A-29289 (Jan. 15, 1963)

A partial assignment of an oil and gas lease is a document required by law or decision to be filed within a stated period and as such comes within the provisions of the regulation relating to filings made on the next business day when the last day of the stated period falls on a day when the office is officially closed.

Edward T. Haas et al., A-29196 (Mar. 15, 1963)

Where after the approval of assignments of record title to an oil and gas lease a protest is filed by one claiming an interest in the lease and judicial proceedings have been instituted to determine the interests and rights of the parties in the lease, the Department will suspend action on further assignments and requests for permission to drill until the parties resolve the controversy by agreement or by the litigation.

Tom Bolack, A-29223, (Mar. 20, 1963)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

Where it cannot be conclusively shown that the land office records indicated land in an oil and gas lease was not available for filing on the day the offer was filed, the lease, otherwise regular, is not to be canceled because a factual situation could have existed which would have made the lands unavailable for filing.

Charles B. Gonsales, A-29010 (Mar. 27, 1963)

A proposed assignment will be denied approval when the lands described therein were not embraced in the lease and a corrected assignment could not be effective until after the expiration of the lease.

Payment of lease rental for the period during which a lease is held does not create a forfeiture when no assignment of the lease is permitted.

Harry Edison et al., A-29267 (June 5, 1963)

A description by projection of the public land survey of unsurveyed land conveyed by a partial assignment of the record title of an oil and gas lease is not defective where there is no requirement for a metes and bounds description of the land assigned and there is an established public land corner near by so that the land assigned can be accurately located.

Mary M. Minder, Thomas E. Jackson, A-29204 (June 18, 1963)

A noncompetitive oil and gas lease offer for land included in other leases which have been extended beyond their terms by land office approval of partial assignments is properly rejected to the extent of the conflicts between the offer and the extended leases; the land office is not to refuse approval of the partial assignments made by one shown on its records to be the owner of the leases merely because the offeror alleges that the record titleholder is not the sole owner of the leases.

Duncan Miller, A-29365 (July 1, 1963)

Where an appellant files for approval an operating agreement alleging that he held operating rights in oil and gas leases prior to the lessee's assignment of the record title interests in the leases to other parties, but the appellant did not submit an operating agreement for approval until years after the assignments and subsequent assignments had been approved and the last assignees had filed for approval an operating agreement for the same interests, the appellant's operating

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

agreement is properly denied approval; however, action on pending further assignments of the leases and the operating agreement submitted for approval by the parties to those assignments will be suspended until the appellant is afforded an opportunity to litigate his claim to the operating rights in judicial proceedings.

Me-Tex Supply Company, A-29127 (July 19, 1963)

Where a partial assignment of an acquired lands oil and gas lease is timely filed but is not accompanied by the statement of the assignee as to whether he is the sole party in interest in the assignment, as required by regulation, and such statement is not filed until after the expiration of the lease, approval of the assignment is properly refused.

Robert L. Smart et al., A-29677 (July 26, 1963)
70 I. D. 383

Approval of an assignment of an oil and gas lease is properly denied when only two signed counterparts of the assignment are filed timely and the third is not filed until the last month of the lease term has commenced.

Margaret Cassidy et al., A-29517 (July 30, 1963)

When a partial assignment of the record title of a public land oil and gas lease is filed without a statement by an assignee as to whether he is the sole party in interest and the statement is not filed until after expiration of the lease term, approval of the proposed assignment will be denied.

Shell Oil Company, E. J. Harp et al., A-29525 (Aug. 20, 1963)

An assignment of an oil and gas lease which describes land not covered by the parent lease is properly rejected even though the incorrect description was in error and the parties intended to assign lands in the parent lease.

Where an assignment of an oil and gas lease describes both land covered and land not covered by the parent lease, it is to be approved as to the land in the lease and rejected as to the land not in the lease.

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

Where an assignment of an oil and gas lease issued prior to Sept. 2, 1960, covering all the lands in it, is approved as to only part of the lands described in the assignment, it constitutes a partial assignment and serves to extend the lease for not less than two years from the effective date of the assignment.

Southern Union Production Company, A-29384 (Sept. 12, 1963) 70 I. D.

There is no authority to extend an oil and gas lease for the time during which action is not taken with respect to approval or disapproval of an assignment of the lease.

An assignment of a partial interest in an oil and gas lease cannot be approved until all the requirements of section 30(a) of the Mineral Leasing Act, as amended, and the pertinent regulations have been met, and when these requirements have not been met prior to the first day of the last month of the lease term, approval of the assignment is properly denied.

Signal Oil and Gas Company, A-29578 (Sept. 25, 1963)

For leases to become segregated through assignment, and thus entitled to the extension authorized for segregated leases, an assignment must be filed when there is at least one lease month remaining in the term of the lease; where the requirements for filing a partial assignment of a noncompetitive oil and gas lease are not met before the end of the next to last month of the lease term, the assignment cannot be approved.

Where an attorney in fact or agent of a lessee signs an assignment of an oil and gas lease on behalf of the lessee, evidence must be furnished of the authority of the attorney or agent to execute such an assignment; and the fact that such evidence has been previously furnished in the same land office in connection with another case will not satisfy this requirement if there has been no incorporation in the record of a reference to the case file number in which evidence of the authority is filed.

Charlotte E. Brown et al., A-29667 (Nov. 21, 1963)
70 I. D. 491

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS

Where a regulation requires only that evidence be furnished of the authority of an agent or attorney in fact to sign an assignment, a partial assignment of an oil and gas lease is not to be rejected because the assignment is signed by a purported agent for the assignor and there is filed only a letter which makes reference to a case record in another land office in which a power of attorney authorizing the agent to act has been filed.

Where an applicant is to be deprived of a statutory right because of his failure to comply with the requirements of a regulation, that regulation should be so clear that there is no basis for the applicant's noncompliance therewith.

William S. Kilroy et al., A-29650 (Dec. 13, 1963) 70 I.D. 520

BONDS

An oil and gas lease applicant for land patented with a reservation of the oil and gas deposits to the United States is properly required to file a bond to protect the owner of surface rights prior to issuance of the lease and he cannot secure that bond by using the same negotiable securities that he has on deposit to secure a bond covering another lease.

Duncan Miller, A-29347 (July 1, 1963)

A time limit imposed upon an oil and gas lease offeror for furnishing a bond to protect the owner of surface rights to the land which time limit is not required by statute or regulation may be waived even though there is pending a junior offer for the land.

Halvor F. Holbeck, A-29595 (Oct. 9, 1963)

CANCELLATION

An oil and gas lease is properly canceled as to land included in an offer for less than 640 acres of land which adjoins other public land available for oil and gas leasing when the offer was filed; it is improperly canceled as to other land included in the same offer which is entirely surrounded by land that is not available for oil and gas leasing.

R. M. Young, Jr., A-29317 (Apr. 22, 1963)

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

Where an oil and gas lease is issued pursuant to the Mineral Leasing Act of 1920, as amended, for lands which at that time are embraced within a reservoir right-of-way, the lease must be canceled since the act of May 21, 1930, provides the exclusive authority to lease such lands; it is immaterial that subsequent to the issuance of the lease the right-of-way is terminated.

United Technical Industries, Inc., (Formerly Larsen Industries, Inc.) et al., A-29406 (Apr. 24, 1963)

Where an oil and gas lease was issued in violation of the regulation prescribing a 640-acre minimum limitation for offers, it must be canceled as to a tract of land which was not isolated from lands available for lease when the offer was filed but was so isolated when a subsequent valid offer for the tract was filed before the lease issued; however, the lease need not be canceled as to other tracts conflicting with the subsequent offer if that offer also did not include adjacent river bed land that was available for leasing and did not meet the 640-acre limitation.

Senemex, Inc., A-29195 (June 10, 1963)

A junior offeror for an oil and gas lease who protests the issuance of a lease to a senior offeror and demands the cancellation has the burden of establishing that the issuance of the lease was in error.

Halvor F. Holbeck, A-29595 (Oct. 9, 1963)

COMPETITIVE LEASES

Where the notice of offer of a competitive oil and gas lease reserves the right to reject any and all bids, even though a bid is for more than the minimum bonus acceptable, and only one bid is received for a particular tract, that bid may properly be rejected for the reason that it is too low, even though it is above the minimum set in the lease offer.

Pan American Petroleum Corp., A-29510 (Aug. 13, 1963)

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY

Since the Mineral Leasing Act gives the Secretary of the Interior discretionary authority to determine whether particular public land shall or shall not be leased for oil and gas development, the rejection of a lease offer is proper when the land sought is within one mile of a Naval Petroleum Reserve and the Navy Department has recommended against leasing the land.

Halvor F. Holbeck, A-29104 (Jan. 14, 1963)

An acquired lands oil and gas lease offer must be rejected when the agency having jurisdiction over the land will not consent to the issuance by this Department of a lease.

Duncan Miller, A-29582 (Aug. 2, 1963)

An oil and gas lease offer for acquired lands is properly rejected where the lands applied for are being administered by the Forest Service and that agency objects to approval of the application.

Charles J. Rydzewski, A-29680 (Aug. 30, 1963)

An applicant for a noncompetitive public lands oil and gas lease of lands being administered by the Forest Service is properly required to file written consent to a stipulation imposed by that agency as a condition precedent to issuance of the lease, or face rejection of his offer.

Duncan Miller, A-29760 (Sept. 18, 1963)

Offers for oil and gas leases on lands withdrawn for the use of the Navy Department must be rejected when the Secretary of Defense refuses to consent to the leasing of the lands.

Edwin D. Warren, A-29720 (Sept. 24, 1963)

It is proper to require one making an oil and gas lease offer to consent to stipulations required by the public land order controlling the use and disposition of the land applied for.

Duncan Miller, A-29701 (Nov. 15, 1963)

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY--Continued

An oil and gas lease offer for acquired lands is properly rejected where the lands applied for are being administered by the Corps of Engineers and that agency has withheld its consent to leasing of the land.

Duncan Miller, A-29897 (Nov. 19, 1963)

DESCRIPTION OF LAND

Where an offer for an oil and gas lease on acquired land describes a tract of land by metes and bounds and is accompanied by a map showing the tract and subsequently the offeror withdraws part of the land and redescribes the remaining land by metes and bounds but in so doing makes an error in referring to a county record in his redescription of a boundary of the tract that is not being changed, the error will not be considered as a defect in description which will require rejection of the offer in favor of a subsequently filed offer for the land.

Duncan Miller, A-29155 (Jan. 24, 1963)

An offer to lease acquired land for oil and gas purposes is properly rejected when in the description of the land contained in such offer, a deviation of a portion of the boundary which does not conform to the public land survey is tied to a quarter-quarter section corner and not to an established survey corner, which term includes township corners, section corners, quarter-section corners and meander corners.

Jack S. Stanley, A-29148 (Jan. 24, 1963)

A noncompetitive offer to lease acquired land of the United States for oil or gas purposes which does not include a metes and bounds description of the land to the extent that the boundaries of the land sought for leasing do not conform to the public land survey is properly rejected.

Jack J. Spielberg, A-29203 (Mar. 18, 1963)

A proposed assignment will be denied approval when the lands described therein were not embraced in the lease and a corrected assignment could not be effective until after the expiration of the lease

Harry Edison et al., A-29267 (June 5, 1963)

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND

A description by projection of the public land survey of unsurveyed land conveyed by a partial assignment of the record title of an oil and gas lease is not defective where there is no requirement for a metes and bounds description of the land assigned and there is an established public land corner near by so that the land assigned can be accurately located.

Mary M. Minder, Thomas E. Jackson, A-29204 (June 18, 1963)

An oil and gas lease offer for unsurveyed, acquired land which fails to include a metes and bounds description of the land sought for leasing but describes the land by tract numbers is not defective for failure to include a metes and bounds description, with the courses and distances between successive angle points on the boundary, unless the deed under which the land was acquired fails to include such a description.

An oil and gas lease offer for unsurveyed, acquired land is not defective because it is not accompanied by a map or plat showing the location of the land applied for within the administrative unit or project of which it is a part, but the offeror may be required to submit a satisfactory showing of such a map or plat.

Hope Natural Gas Company, A-29371 (June 25, 1963) 70 I.D. 228

A description of the "SW1/4, SW1/4" of a section of public land in an oil and gas lease offer must be read as a designation of the "SW1/4 and the SW1/4" and not of the "SW1/4SW1/4" merely because, so read, it leads to duplication in the land applied for, and the offer is properly rejected where the rental payment is deficient by more than 10 percent from the rental required for the land as literally described.

Joe Bart Moore, A-29361 (July 1, 1963)

An application for an oil and gas lease covering unsurveyed public lands which fails to describe the lands by metes and bounds is fatally defective when the regulation in effect at the time required such description.

Prentiss E. Furlow, A-29585 (July 19, 1963)

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

When an oil and gas lease offer for land in Alaska does not conform with a regulation which specifies that unsurveyed land be described by metes and bounds and be tied to a corner of the public land survey, the application must be rejected.

Estate of H. Roland Glaisyer Albert Stevenson, Administrator, A-29448 (July 24, 1963)

Under the regulation, 43 CFR, 1960 Supp., 192.42a(c), which required that descriptions of land in oil and gas lease offers for land shown on protracted surveys be described only according to the section, township, and range shown on the approved protracted surveys, it is not proper to reject offers to the extent that they describe aliquot parts of protracted sections.

Jack V. Walker et al., A-29402, A-29540, A-29541, A-29565, A-29571 (July 22, 1963)

An assignment of an oil and gas lease which describes land not covered by the parent lease is properly rejected even though the incorrect description was in error and the parties intended to assign lands in the parent lease.

Where an assignment of an oil and gas lease describes both land covered and land not covered by the parent lease, it is to be approved as to the land in the lease and rejected as to the land not in the lease.

Where an assignment of an oil and gas lease issued prior to Sept. 2, 1960, covering all the lands in it, is approved as to only part of the lands described in the assignment, it constitutes a partial assignment and serves to extend the lease for not less than two years from the effective date of the assignment.

Southern Union Production Company, A-29384 (Sept. 12, 1963) 70 I.D. 406

The responsibility of furnishing a proper and adequate description of lands in an oil and gas lease offer is upon the applicant and cannot be shifted by him to land office personnel by his filing a document which purports to be an amendment of the land description but which merely attempts to authorize the land office personnel to describe the offered lands in a way acceptable to them and which would thus be agreeable to him.

Duncan Miller, A-29698 (Sept. 18, 1963)

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

An oil and gas lease offer for unsurveyed acquired land is not defective because it is not accompanied by a map or plat showing the location of the land applied for within the administrative unit or project of which it is a part, nor need the offeror submit a satisfactory showing of such a map or plat when maps are on file in Forest Service offices.

Mrs. Rita Wasserman, A-29668 (Sept. 30, 1963)

An oil and gas noncompetitive lease offer filed during a period for filing simultaneous offers for lands formerly in terminated leases is properly rejected when it fails to include the section number of the land applied for in the application, in accord with regulations 43 CFR 192.42(g)(1)(i) and 192.42a(a); the fact that the offer was filed under the procedure specified in 43 CFR 192.43 does not cure the defect in the offer resulting from lack of the section number of the land applied for.

Duncan Miller, A-29672 (Nov. 1, 1963)

The regulations governing the description of land in oil and gas lease offers for acquired lands of the United States are not applicable to offers for leases on public lands.

Charles J. Babington, A-29965 (Nov. 26, 1963)

An amendment of an oil and gas offer to change the description of land sought for leasing to include the correct designation of a legal subdivision owned by the United States within a reservoir area in place of a previous designation of a subdivision not within the reservoir area and not owned by the United States should not be rejected as a substitution of one tract of land for another which requires the filing of a new offer, where it appears that the offeror intended originally to apply for the land described in the amendment.

Duncan Miller, A-29697 (Dec. 4, 1963)
70 I. D. 512

An amendment of an oil and gas offer to change the description of land sought for leasing to include a proper designation of two separate subdivisions of the same section instead of a single, smaller subdivision should not be rejected as a substitution of one tract of land for another which requires the filing of a new offer where it appears

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

that the offeror intended originally to apply for the land described in the amendment.

Duncan Miller, A-29791 (Dec. 11, 1963)

DISCRETION TO LEASE

Since the Mineral Leasing Act gives the Secretary of the Interior discretionary authority to determine whether particular public land shall or shall not be leased for oil and gas development, the rejection of a lease offer is proper when the land sought is within one mile of a Naval Petroleum Reserve and the Navy Department has recommended against leasing the land.

Halvor F. Holbeck, A-29104 (Jan. 14, 1963)

An offer to lease acquired land not within the withdrawn area of a wildlife refuge but which was acquired for wildlife protection is properly rejected in the exercise of the discretion of the Secretary of the Interior to determine whether such land shall or shall not be leased for oil and gas purposes.

Stuart Montgomery, A-29053 (Jan. 24, 1963)

The Secretary of the Interior has discretion to lease or to refrain from leasing public lands for oil and gas purposes.

Where the Secretary of the Interior determines not to lease a certain area of the public lands for oil and gas purposes and that determination is based upon considerations of the public interest and facility in administering the lands, his exercise of his discretion in the matter is neither arbitrary nor capricious.

John R. Roderick and C. Calvert Knudsen, A-29044 (Mar. 1, 1963)

When the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that land in a wildlife refuge is closed to oil and gas leasing, it is proper to reject an oil and gas lease offer for such land even though the land sought was open to oil and gas leasing when the offer was filed.

Duncan Miller, A-29340 (Apr. 29, 1963)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

When the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that public lands defined as "coordination lands" are closed to oil and gas leasing, it is proper to reject an oil and gas lease offer for such land.

W. Argyle Nelson, Shell Oil Company, A-29290 (July 2, 1963)

When the Secretary of the Interior exercises his discretionary authority to issue or not to issue oil and gas leases by withdrawing public land from such leasing, oil and gas lease offers for such land are properly rejected even though they were filed prior to the withdrawal.

Howard S. Mollring, A-29498 (July 26, 1963)

DRAINAGE

The Secretary of the Interior has implied authority to lease acquired lands excepted from leasing under the Mineral Leasing Act for Acquired Lands to protect them from drainage where the mineral deposits are under the jurisdiction of this Department, but such lands will be leased by competitive bidding and noncompetitive offers for such lands are properly rejected.

Arnold R. Gilbert, Belco Petroleum Corporation, A-29123 (Jan. 14, 1963)

EXTENSIONS

In order for an oil and gas lessee to be entitled to the extension or suspension benefits provided by the act of September 21, 1959, or section 27(j) of the Mineral Leasing Act Revision of 1960, respectively, as to a given lease, the lease must have been included in a "proceeding" within the meaning of those acts, which entails at least some specific, direct action against the lease discernible from the departmental records, and there must have been a suspension by the Secretary of the lessee's rights under the lease pending a decision in the proceeding or a waiver of such rights by the lessee; a mere failure to take action to approve or deny a pending assignment of the lease prior to the expiration of its term is not sufficient to entitle the lessee to the extension benefits.

Martha Featherstone, A-29138 (Jan. 31, 1963)
70 I. D. 19

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

An oil and gas lease in its extended term is extended for two years from the date of discovery of oil or gas in paying quantities on land in the lease out of which the extended lease was segregated by partial assignment.

Duncan Miller, A-28709 (Jan. 31, 1963)
70 I. D. 1

An oil and gas lease issued when there is a valid and subsisting oil and gas lease on the same land is properly declared void ab initio notwithstanding reports which showed no production under such subsisting lease for several months immediately preceding the end of the lease term when evidence at a hearing clearly sustains the conclusion that there was on the leased land at the end of the fixed term of the earlier lease a well capable of producing oil and gas in paying quantities and no notice had been given the lessee to resume production.

Gwen Gaukel, A-29139 (Feb. 6, 1963)

Where a Departmental regulation requires that the filing fee due in connection with a request for a 5-year extension of an oil and gas lease be paid before a certain date, a check for the filing fee (and rental) filed before, but erroneously dishonored by the drawee bank after, the pertinent date will be held to have been paid within the prescribed time.

Duncan Miller, A-28657 (Mar. 29, 1963)
70 I. D. 113

Although a departmental regulation precludes the acceptance of oil and gas offers to lease lands within wildlife refuges and by departmental order certain lands within existing oil and gas leases are made a part of a refuge, applications for the five-year extension of such leases should not be rejected on the ground that such lands have been withdrawn, when none of the actions taken by the Department with respect to the lands purports to be a withdrawal of such lands from the operation of the Mineral Leasing Acts.

Paul Gordon Amerada Petroleum Corporation, A-29332 (May 2, 1963) 70 I. D. 225

The extension provided for in section 4(d) of the Mineral Leasing Act Revision of 1960 applies to oil and gas leases extended beyond the five-year extended period by reason of a partial assignment, since the words "primary term," as used in that section, have been interpreted to mean all periods in the life of the lease prior to its extension by reason of the production of oil and

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

gas in paying quantities, and an oil and gas offer filed when the lease has been extended pursuant to that section is properly rejected.

Dona M. Mohan, A-29304 (May 3, 1963)

In the absence of a timely application for an oil and gas lease five-year extension, the lease terminates by operation of law at the end of five years.

An oil and gas lease extension application is not effective though it is timely filed, when the one filing is an unauthorized agent and his action is not ratified by the lessee until after the expiration of the time allowable for filing of the lease extension application.

Frank and Angela Naporan, A-29420 (June 20, 1963)

A noncompetitive oil and gas lease offer for land included in other leases which have been extended beyond their terms by land office approval of partial assignments is properly rejected to the extent of the conflicts between the offer and the extended leases; the land office is not to refuse approval of the partial assignments made by one shown on its records to be the owner of the leases merely because the offeror alleges that the record titleholder is not the sole owner of the leases.

Duncan Miller, A-29365 (July 1, 1963)

Where an assignment of an oil and gas lease issued prior to Sept. 2, 1960, covering all the lands in it, is approved as to only part of the lands described in the assignment, it constitutes a partial assignment and serves to extend the lease for not less than two years from the effective date of the assignment.

Southern Union Production Company, A-29384 (Sept. 12, 1963) 70 I. D. 406

There is no authority to extend an oil and gas lease for the time during which action is not taken with respect to approval or disapproval of an assignment of the lease.

Signal Oil and Gas Company, A-29578 (Sept. 25, 1963)

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

An extension of an oil and gas lease granted by a competent official of the Department of the Interior, though granted erroneously, segregates the land embraced in the lease and prevents initiation of rights by other lease applicants so long as it remains uncanceled of record.

H. G. Jeffrey, A-29779 (Nov. 18, 1963)

For leases to become segregated through assignment, and thus entitled to the extension authorized for segregated leases, an assignment must be filed when there is at least one lease month remaining in the term of the lease; where the requirements for filing a partial assignment of a noncompetitive oil and gas lease are not met before the end of the next to last month of the lease term, the assignment cannot be approved.

Charlotte E. Brown et al., A-29667 (Nov. 21, 1963) 70 I. D. 491

FIRST QUALIFIED APPLICANT

An applicant for an oil and gas lease on acquired land of the United States is not disqualified for the award of a lease because his attorney writes to a United States Senator concerning an appeal from a land office decision on the availability of the land for leasing and the Senator routinely refers the letter to the Bureau of Land Management for such favorable consideration as it may warrant and for a report.

Duncan Miller, A-29155 (Jan. 24, 1963)

A protest against issuance of an oil and gas lease to an offeror who filed his offer after the relinquishment of a prior lease on the land is properly rejected where the protest is based simply on an irresponsible charge that an iniquitous relationship existed between the offeror and former lessee.

Duncan Miller, A-29190 (Jan. 29, 1963)

A noncompetitive offer to lease for oil and gas purposes public land upon which an earlier lease has terminated by operation of law at the expiration of the lease term, which offer is filed in advance of the period for simultaneous filing of offers announced by the land office as provided in the departmental regulations, is properly rejected.

Thor-Westcliffe Development, Inc., A-29338, A-29520, A-29931 (Apr. 11, 1963) 70 I. D. 134

OIL AND GAS LEASES--Continued

FIRST QUALIFIED APPLICANT--Continued

Where an oil and gas lease was issued in violation of the regulation prescribing a 640-acre minimum limitation for offers, it must be canceled as to a tract of land which was not isolated from lands available for lease when the offer was filed but was so isolated when a subsequent valid offer for the tract was filed before the lease issued; however, the lease need not be canceled as to other tracts conflicting with the subsequent offer if that offer also did not include adjacent river bed land that was available for leasing and did not meet the 640-acre limitation.

Senemex, Inc., A-29195 (June 10, 1963)

A noncompetitive offer for an oil and gas lease is properly rejected when it is filed for land in an expired lease but before the land is made available for filing pursuant to 43CFR 192.43.

R. M. Young, Jr. Danite Corporation, A-29519 (July 22, 1963)

A protest filed by a junior offeror against simultaneously-filed oil and gas lease offers which charges disqualification of the senior offer because of the possibility that the senior offeror might have been married to another offeror so that neither was actually the sole party in interest in the separate offers filed is properly rejected in the absence of any proof that either of the two offerors in question was not acting in his or her own behalf.

Duncan Miller, A-29735 (Sept. 17, 1963)

A junior offeror for an oil and gas lease who protests the issuance of a lease to a senior offeror and demands its cancellation has the burden of establishing that the issuance of the lease was in error.

Halvor F. Holbeck, A-29595 (Oct. 9, 1963)

An oil and gas lease offer for land formerly included in a terminated lease is properly rejected when, at the time the offer is filed, the land has not yet been posted as available for leasing.

Louise Safarik, A-29919 (Nov. 26, 1963)

OIL AND GAS LEASES--Continued

FUTURE AND FRACTIONAL INTEREST LEASES

An offer to lease a fractional mineral interest in acquired land is properly rejected if the offeror upon issuance of a lease would not own or control the majority interest in the operating rights in the land applied for.

An offer for a 50% fractional interest lease cannot be accepted if in fact the United States owns all the mineral interest.

When an offeror for a 50% fractional interest lease demonstrates on appeal that the United States may own the entire interest in the oil and gas deposits but has submitted with his offer advance rental computed on the assumption that the United States owned only a 50% interest, his offer cannot be accepted as one for the entire mineral interest if the rental paid is deficient by more than 10% from the rental required for a 100% interest lease.

Duncan Miller, A-29425 (July 23, 1963)

KNOWN GEOLOGICAL STRUCTURE

A noncompetitive oil and gas lease offer filed on July 17th is properly rejected on the basis of information that the land sought for leasing is within a known geologic structure of a producing gas field obtained on July 10th by a Geological Survey officer who witnessed the testing of a successful well on the same structure as the land described in the offer even though the well was not completed prior to July 17th.

The effectiveness of a determination of the boundaries of the known geologic structure of a producing field is not dependent upon the filing of maps or diagrams of the structure.

Sheridan L. McGarry, A-29518 (July 29, 1963)

LANDS SUBJECT TO

When mineral rights on acquired Louisiana land vest in the United States by nonuser, the rights are subject to an oil and gas lease offer.

Estate of Edwin W. Stockmeyer, Deceased Charles J. Babington, A-29233 (Mar. 26, 1963)

Where it cannot be conclusively shown that the land office records indicated land in an oil and gas lease was not available for filing on the day the

LANDS SUBJECT TO--Continued

offer was filed, the lease, otherwise regular, is not to be canceled because a factual situation could have existed which would have made the lands unavailable for filing.

Charles B. Gonsales, A-29010 (Mar. 27, 1963)

A noncompetitive offer to lease for oil and gas purposes public land upon which an earlier lease has terminated by operation of law at the expiration of the lease term, which offer is filed in advance of the period for simultaneous filing of offers announced by the land office as provided in the departmental regulations, is properly rejected.

Thor-Westcliffe Development, Inc., A-29338, A-29520, A-29931 (Apr. 11, 1963) 70 I. D. 134

Where an oil and gas lease is issued pursuant to the Mineral Leasing Act of 1920, as amended, for lands which at that time are embraced within a reservoir right-of-way, the lease must be canceled since the act of May 21, 1930, provides the exclusive authority to lease such lands; it is immaterial that subsequent to the issuance of the lease the right-of-way is terminated.

United Technical Industries, Inc., (Formerly Larsen Industries, Inc.) et al., A-29406 (Apr. 24, 1963)

When the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that land in a wildlife refuge is closed to oil and gas leasing, it is proper to reject an oil and gas lease offer for such land even though the land sought was open to oil and gas leasing when the offer was filed.

Duncan Miller, A-29340 (Apr. 29, 1963)

A noncompetitive oil and gas lease offer for land included in other leases which have been extended beyond their terms by land office approval of partial assignments is properly rejected to the extent of the conflicts between the offer and the extended leases; the land office is not to refuse approval of the partial assignments made by one shown on its records to be the owner of the leases merely because the offeror alleges that the record titleholder is not the sole owner of the leases.

Duncan Miller, A-29365 (July 1, 1963)

LANDS SUBJECT TO

When the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to declare by regulation that public lands defined as "coordination lands" are closed to oil and gas leasing, it is proper to reject an oil and gas lease offer for such land.

W. Argyle Nelson, Shell Oil Company, A-29290 (July 2, 1963)

An oil and gas lease offer is properly rejected where the lands applied for are embraced in a homesite patented without a mineral reservation to the United States.

Doris L. Ervin et al., A-29393 (July 8, 1963)

The act of September 14, 1960, quitclaimed to the patentee all right, title, and interest in oil and gas deposits reserved by the United States in lands in the Kenai Peninsula in Alaska on which all requirements for a homestead patent had been met prior to July 23, 1957, except for submission of acceptable final proof; the act did not affect the mineral reservations to the United States in lands which were patented under the homestead laws prior to July 23, 1957.

Oscar C. Collins, Standard Oil Company of California, A-29415 (July 15, 1963) 70 I. D. 359

A noncompetitive offer for an oil and gas lease is properly rejected when it is filed for land in an expired lease but before the land is made available for filing pursuant to 43 CFR 192. 43.

R. M. Young, Jr. Danite Corporation, A-29519 (July 22, 1963)

When the Secretary of the Interior exercises his discretionary authority to issue or not to issue oil and gas leases by withdrawing public land from such leasing, oil and gas lease offers for such land are properly rejected even though they were filed prior to the withdrawal.

Howard S. Mollring, A-29498 (July 26, 1963)

Although land is included within a homestead entry for which acceptable final proof has been filed and for which the entryman has met all the other requirements, it is to be considered as available for oil and gas leasing within the meaning of the 640-acre rule.

Standard Oil Company of California, A-29400 (Sept. 17, 1963) 70 I. D. 422

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Offers for oil and gas leases on lands withdrawn for the use of the Navy Department must be rejected when the Secretary of Defense refuses to consent to the leasing of the lands.

Edwin D. Warren, A-29720 (Sept. 24, 1963)

If lands are within an existing reservoir right-of way when an oil and gas lease offer filed under the Mineral Leasing Act of 1920 is filed, the offer must be rejected as the oil and gas deposits in such a right-of-way may be leased only as prescribed by the act of May 21, 1930.

Jay P. Nielson, A-29743 (Nov. 5, 1963)

Where oil and gas leases were extended to Jan. 31, 1960, the land in the leases became available for filing thereafter only in accordance with the procedure set forth in 43 CFR 192.43, even though the leases may have been improperly extended and the leases would otherwise have expired at a date prior to the adoption of 43 CFR 192.43.

H. G. Jeffrey, A-29779 (Nov. 18, 1963)

Acquired lands situated within the limits of an incorporated city are not subject to leasing under the provisions of the Mineral Leasing Act for Acquired Lands.

Duncan Miller, A-29897 (Nov. 19, 1963)

An oil and gas lease offer for land formerly included in a terminated lease is properly rejected when, at the time the offer is filed, the land has not yet been posted as available for leasing.

Louise Safarik, A-29919 (Nov. 26, 1963)

NONCOMPETITIVE LEASES

When, subsequent to the filing of a noncompetitive offer to lease for oil and gas, a determination is made that a portion of the lands is thereafter to be considered within the known geologic structure of a producing field, the administrative practice of issuing separate leases for the

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES --Continued

lands within and without the structure is proper and not in conflict with the mineral leasing laws and regulations.

Nettie M. Lewis, A-28737 (Jan. 31, 1963) 70 I. D. 4

An oil and gas lease offer filed before the amendment of the Mineral Leasing Act on September 2, 1960, which is pending thereafter is subject to the amendatory act and the offeror is, therefore, properly required to consent to the terms of a lease as required by the act of September 2, 1960.

Duncan Miller, A-29231 (Feb. 5, 1963)

An oil and gas lease offer, whether for public land or acquired land, which was filed before the amendment of the Mineral Leasing Act on September 2, 1960, and which was still pending at that time became subject to the act of September 2, 1960, so that the offeror is properly required to consent to the issuance of a lease subject to the terms prescribed by the amendatory act.

Lucille S. West, Duncan Miller et al., A-29242 et al. (Feb. 25, 1963)

An oil and gas lease offer filed before the amendment of the Mineral Leasing Act by the act of Sept. 2, 1960, and still pending, is subject to that act and the offeror is properly required to subject his lease to its terms.

Duncan Miller, A-29278 (May 13, 1963)

An oil and gas lease offer for acquired land which was filed before the amendment of the Mineral Leasing Act on Sept. 2, 1960, and which was stil pending at that time became subject to the act of Sept. 2, 1960, so that the offeror is properly required to consent to the issuance of a lease subject to the terms prescribed by the amendatory act.

Duncan Miller, A-29633 (Sept. 5, 1963)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Oil and gas lease offers for public or acquired lands which were filed before the amendment of the Mineral Leasing Act by the act of Sept. 2, 1960, and which are still pending are subject to the act of Sept. 2, 1960, and offerors thereunder are properly required to consent to leases subject to the terms of the act of Sept. 2, 1960.

Duncan Miller, A-29921, A-29922 (Nov. 26, 1963)

An oil and gas lease offer for acquired land filed before the amendment of the Mineral Leasing Act on Sept. 2, 1960, which was still pending at that time, became subject to the act of Sept. 2, 1960, so that the offeror is properly required to consent to the issuance of a lease subject to the terms prescribed by the amendatory act.

Duncan Miller, A-29697 (Dec. 4, 1963)
70 I.D. 512

Where an offer for a noncompetitive oil and gas lease filed prior to Sept. 2, 1960, is accepted after that date without first having secured from the offeror his consent to an amendment of the lease terms in accordance with the amendments required by the act of Sept. 2, 1960, the issuance of the lease should be rescinded and the offeror required to file his consent prior to acceptance of the offer.

Duncan Miller, A-29694 (Dec. 5, 1963)

An oil and gas lease offer for acquired land filed before the amendment of the Mineral Leasing Act on Sept. 2, 1960, which was still pending at that time, became subject to the act of Sept. 2, 1960, so that the offeror is properly required to consent to the issuance of a lease subject to the terms prescribed by the amendatory act.

Duncan Miller, A-29791 (Dec. 11, 1963)

OPERATING AGREEMENTS

Where an appellant files for approval an operating agreement alleging that he held operating rights in oil and gas leases prior to the lessee's assignment of the record title interests in the leases to other parties, but the appellant did not submit an operating agreement for approval until years after the assignments and subsequent assignments had been approved and the last assignees had filed for approval an operating agreement for the same interests, the appellant's operating agreement is properly denied approval; however, action on pending further assignments of the leases and the operating agreement submitted for approval by the parties to those assignments will be suspended until the appellant is afforded an opportunity to litigate his claim to the operating rights in judicial proceedings.

Me-Tex Supply Company, A-29127 (July 19, 1963)

PATENTED OR ENTERED LAND

Although land is included within a homestead entry for which acceptable final proof has been filed and for which the entryman has met all the other requirements, it is to be considered as available for oil and gas leasing within the meaning of the 640-acre rule.

Standard Oil Company of California, A-29400 (Sept. 17, 1963) 70 I.D. 422

PRODUCTION

Elimination of a portion of a lease committed to a producing unit plan from that unit does not cause or permit a segregation of the eliminated portion into a new and distinct lease. The eliminated portion of the lease and the portion which remains unitized continue to form one lease. Consequently, the term of the eliminated portion will continue coextensively with the term of the portion still committed to the unit plan so long as there is production anywhere on the lease. It is not material that the production is constructive with respect to the lease and not actually within the leasehold.

Continental Oil Company, Reversal Approved by Secretary May 15, 1963 70 I.D. 473

A noncompetitive oil and gas lease subject to the automatic termination provision of the act of July 29, 1954, is properly terminated for failure to pay annual rental for the fifth year of the lease on or before the fourth anniversary date of the lease when it appears that the lessee's claim to a well capable of producing oil or gas in paying quantities rests upon an uncompleted well which was then being drilled and was not in a physical condition to produce oil or gas in paying quantities.

Joseph C. Sterge, A-29348 (July 26, 1963)
70 I.D. 375

OIL AND GAS LEASES--Continued

RELINQUISHMENTS

A junior oil and gas lease offer is properly rejected even though the prior offer is filed by one who relinquishes his lease on the same land or by one who knew a previous lease of the land was to be relinquished and filed his offer in reliance on such relinquishment.

Duncan Miller, A-29291 (Mar. 20, 1963)

A lessee of an oil and gas lease who relinquishes his lease is not thereby disqualified from applying for a new lease of the same lands, nor is one disqualified who has knowledge of the relinquishment and applies as soon as the land becomes available for leasing.

Duncan Miller, A-29574 (July 19, 1963)

A junior oil and gas lease offer is properly rejected even though the prior offer is filed by one who relinquished his lease on the same land or by one who knew a previous lease of the land was to be relinquished and filed his offer in reliance on such relinquishment.

Duncan Miller, A-29489 (July 26, 1963)

RENTALS

The automatic termination of a nonproducing oil and gas lease for failure to pay rentals timely is not prevented by either the fact that payment of less than the total amount due was made in an amount as erroneously billed by the Bureau of Land Management, or that the deficiency in rental for the total acreage of the lease was tendered after the due date.

Niobrara Oil and Mineral Corporation, A-29502 (Jan. 11, 1963)

The cancellation of an oil and gas lease which is not subject to the automatic termination provisions of the act of July 29, 1954, for nonpayment of the rent shortly after its anniversary date on which annual rent accrues does not relieve the lessee of his liability for payment of the accrued rent.

Parker Manufacturing Company et al., A-29111 (Jan. 14, 1963)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Where a lessee has received notice that a partial assignment of his lease has been approved at least two weeks prior to its anniversary date and that the segregated leases will be extended beyond that date, the retained lease automatically terminates when he does not pay the rental for it in full on or before the anniversary date.

John H. and Pauline V. Trigg, A-29289 (Jan. 15, 1963)

Where a departmental regulation requires that advance rental be submitted with an offer to lease for oil and gas, a check for the required rental submitted with the offer which is erroneously dishonored by the drawee bank will be held to have been properly filed.

Duncan Miller, A-29278 (May 13, 1963)

Payment of lease rental for the period during which a lease is held does not create a forfeiture when no assignment of the lease is permitted.

Harry Edison et al., A-29267 (June 5, 1963)

A description of the "SW1/4, SW1/4" of a section of public land in an oil and gas lease offer must be read as a designation of the "SW1/4 and SW1/4" and not of the "SW1/4SW1/4" merely because, so read, it leads to duplication in the land applied for, and the offer is properly rejected where the rental payment is deficient by more than 10 percent from the rental required for the land as literally described.

Joe Bart Moore, A-29361 (July 1, 1963)

When an offeror for a 50% fractional interest lease demonstrates on appeal that the United States may own the entire interest in the oil and gas deposits but has submitted with his offer advance rental computed on the assumption that the United States owned only a 50% interest, his offer cannot be accepted as one for the entire mineral interest if the rental paid is deficient by more than 10% from the rental required for a 100% interest lease.

Duncan Miller, A-29425 (July 23, 1963)

OIL AND GAS LEASES--Continued

RIGHTS-OF-WAY LEASES

If lands are within an existing reservoir right-of way when an oil and gas lease offer filed under the Mineral Leasing Act of 1920 is filed, the offer must be rejected as the oil and gas deposits in such a right-of-way may be leased only as prescribed by the act of May 21, 1930.

Jay P. Nielson, A-29743 (Nov. 5, 1963)

ROYALTIES

Royalties on production from land acquired for military purposes and leased protectively for oil and gas purposes are properly computed in accordance with the express terms of the leases without deductions for extraction or processing of liquid products and residue gas and of gathering, dehydration, and compression costs of gas; it is immaterial that the lessee does not do the extracting or processing and that it is performed by a contractor under an agreement whereby title to the liquid products passes to the contractor upon delivery of the well gas to the processing plant.

Placid Oil Company, A-29577 (Sept. 30, 1963)
70 I. D. 438

The Secretary of the Interior in computing the basic royalty due the United States under a lease recognized and maintained under section 6 of the Outer Continental Shelf Lands Act, where it is to receive royalty on the value of gas produced rather than in kind, may properly look to the actual consideration to be received by its lessee-seller under gas sales contracts with a buyer in order to determine the proper value basis for the royalty; and a determination by the Geological Survey that a reimbursement to the seller for an amount due the United States by it as an additional royalty pursuant to section 6(a)(9) of that act constitutes part of the contract sales price for the gas and should be included in the total value basis for the basic royalty computation is proper, regardless of whether the reimbursement is specifically stated as separate from the contract price or is stated as being included in the total price in a settlement agreement approved by the Federal Power Commission.

Kerr-McGee Oil Industries, Inc., et al., A-29894 (Oct. 31, 1963) 70 I. D. 464

OIL AND GAS LEASES--Continued

640-ACRE LIMITATION

An oil and gas lease is properly canceled as to land included in an offer for less than 640 acres of land which adjoins other public land available for oil and gas leasing when the offer was filed; it is improperly canceled as to other land included in the same offer which is entirely surrounded by land that is not available for oil and gas leasing.

R. M. Young, Jr., A-29317 (Apr. 22. 1963)

The rejection of an offer for failure to comply with the 640-acre minimum limitation because nonnavigable river bed lands adjacent to the public land applied for were available for lease will be affirmed where appellant does not show that the river bed lands were not available for lease, as an offer for lease under the Mineral Leasing Act will not be accepted as an offer for the Government's riparian rights to the river bed lands unless such lands have been properly described and rentals submitted for them.

Clayton Phebus, 48 L. D. 128 (1921); A. W. Glassford, et al., 56 I. D. 88 (1937); Associate Solicitor's opinion, M-36512 (July 29, 1958), overruled to extent inconsistent.

Emily K. Connell, A-29176 (May 7, 1963)
70 I. D. 159

An oil and gas lease offer for separate tracts of land comprising less than 640 acres is properly rejected as to one tract that adjoins land which was available for leasing at the time the offer was filed but was not included in the offer but must be accepted as to another tract entirely surrounded by land not available for leasing.

James P. Witmer, A-29378 (June 7, 1963)

An oil and gas lease offer does not come within the exception to the 640-acre minimum limitation pertaining to lands surrounded by lands unavailable for leasing if there were river bed lands available for leasing adjacent to those applied for when the offer was filed.

Where an oil and gas lease was issued in violation of the regulation prescribing a 640-acre minimum limitation for offers, it must be canceled as to a tract of land which was not isolated from lands available for lease when the offer was filed but was so isolated when a subsequent valid offer for the tract was filed before the lease issued; however, the lease need not be canceled as to other tracts conflicting with the subsequent offer if that offer also did not include adjacent

OIL AND GAS LEASES--Continued

640-ACRE LIMITATION--Continued

river bed land that was available for leasing and did not meet the 640-acre limitation.

Senemex, Inc., A-29195 (June 10, 1963)

An oil and gas lease offer for less than 640 acres is properly rejected when the application fails to include other adjoining lands which were available for leasing at the time the offer was filed, notwithstanding the fact that they were included in a prior outstanding lease offer.

Duncan Miller, A-29521 (Aug. 29, 1963)

Although land is included within a homestead entry for wnich acceptable final proof has been filed and for which the entryman has met all the other requirements, it is to be considered as available for oil and gas leasing within the meaning of the 640-acre rule.

Standard Oil Company of California, A-29400 (Sept. 17, 1963) 70 I. D. 422

Where an application for an oil and gas lease covers less than 640 acres and the land applied for adjoins land available for leasing, it will be deemed to be for the equivalent of a section and therefore proper so long as the amount by which it is under 640 acres is less than the amount that the inclusion of the smallest of the adjoining subdivisions available for leasing would put it in excess of 640 acres.

Union Oil Company of California, A-29725 (Sept. 17, 1963)

An oil and gas lease offer for separate tracts comprising less than 640 acres is properly allowed as to one tract which is surrounded by land not available for leasing and properly rejected as to another tract which adjoins land that was available for leasing when the offer was filed but was not included in the offer.

George E. Conley, A-29634 (Oct. 18, 1963)

OIL AND GAS LEASES--Continued

640-ACRE LIMITATION--Continued

An oil and gas lease offer for less than 640 acres of land available for leasing is properly rejected when the application fails to include other adjoining land which was available for leasing at the time the offer was filed.

Duncan Miller, A-29872 (Nov. 5, 1963)

TERMINATION

The automatic termination of a nonproducing oil and gas lease for failure to pay rentals timely is not prevented by either the fact that payment of less than the total amount due was made in an amount as erroneously billed by the Bureau of Land Management, or that the deficiency in rental for the total acreage of the lease was tendered after the due date.

Niobrara Oil and Mineral Corporation, A-29502 (Jan. 11, 1963)

Where a lessee has received notice that a partial assignment of his lease has been approved at least two weeks prior to its anniversary date and that the segregated leases will be extended beyond that date, the retained lease automatically terminates when he does not pay the rental for it in full on or before the anniversary date.

John H. and Pauline V. Trigg, A-29289 (Jan. 15, 1963)

An oil and gas lease issued when there is a valid and subsisting oil and gas lease on the same land is properly declared void ab initio notwithstanding reports which showed no production under such subsisting lease for several months immediately preceding the end of the lease term when evidence at a hearing clearly sustains the conclusion that there was on the leased land at the end of the fixed term of the earlier lease a well capable of producing oil and gas in paying quantities and no notice had been given the lessee to resume production.

Gwen Gaukel, A-29139 (Feb. 6, 1963)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

A noncompetitive oil and gas lease subject to the automatic termination provision of the act of July 29, 1954, is properly terminated for failure to pay annual rental for the fifth year of the lease on or before the fourth anniversary date of the lease when it appears that the lessee's claim to a well capable of producing oil or gas in paying quantities rests upon an uncompleted well which was then being drilled and was not in a physical condition to produce oil or gas in paying quantities.

There is no occasion for having a hearing on the question as to whether an oil and gas lease is saved from automatic termination for nonpayment of rental because it has a well capable of producing oil or gas in paying quantities where where is no indication that the lessee accepts the Department's interpretation as to what constitutes such a well and is prepared to submit evidence in accordance with that interpretation.

Joseph C. Sterge, A-29348 (July 26, 1963) 70 I. D. 375

UNIT AND COOPERATIVE AGREEMENTS

Elimination of a portion of a lease committed to a producing unit plan from that unit does not cause or permit a segregation of the eliminated portion into a new and distinct lease. The eliminated portion of the lease and the portion which remains unitized continue to form one lease. Consequently, the term of the eliminated portion will continue coextensively with the term of the portion still committed to the unit plan so long as there is production anywhere on the lease. It is not material that the production is constructive with respect to the lease and not actually within the leasehold.

Section 17(j) (formerly section 17b) of the Mineral Leasing Act of 1920, as amended, contains no authority for the Department to segregate a unitized lease into separate leases upon its partial elimination from a unit plan by reason of contraction of the unit area.

Continental Oil Company, Reversal Approved by Secretary May 15, 1963 70 I. D. 473

OUTER CONTINENTAL SHELF LANDS ACT

(See also Oil and Gas Leases)

GENERALLY

The Secretary of the Interior in computing the basic royalty due the United States under a lease recognized and maintained under section 6 of the Outer Continental Shelf Lands Act, where it is to receive royalty on the value of gas produced rather than in kind, may properly look to the actual consideration to be received by its lessee-seller under gas sales contracts with a buyer in order to determine the proper value basis for the royalty; and a determination by the Geological Survey that a reimbursement to the seller for an amount due the United States by it as an additional royalty pursuant to section 6(a)(9) of that act constitutes part of the contract sales price for the gas and should be included in the total value basis for the basic royalty computation is proper, regardless of whether the reimbursement is specifically stated as separate from the contract price or is stated as being included in the total price in a settlement agreement approved by the Federal Power Commission.

Kerr-McGee Oil Industries, Inc., et al., A-29894 (Oct. 31, 1963) 70 I. D. 464

OIL AND GAS LEASES

The requirement in Executive Order No. 10925 that every contracting agency shall include an equal employment stipulation in contracts to be executed is properly to be read as a condition of a notice thereafter issued inviting bids for leases on the Outer Continental Shelf, and requiring a successful bidder to execute the stipulation does not constitute a variance from the terms of the notice of sale which has the effect of rejecting the bid or constituting a counteroffer.

G. Scott Hammonds A-29733 (Mar. 20, 1963

Barging costs are a relevant matter to be taken into account in computing the royalties due the United States where there is no bona fide established market at the field or area where the leases are situated. The Secretary has discretion to determine the method of establishing an allowance for barging costs.

Shell Oil Company, et al., A-29460 (Aug. 2, 1963) 70 I. D. 393

Where the notice of offer of a competitive oil and gas lease reserves the right to reject any and all bids, even though a bid is for more than the minimum bonus acceptable, and only one bid is received for a particular tract, that bid may

OUTER CONTINENTAL SHELF LANDS ACT --Continued

(See also Oil and Gas Leases)

OIL AND GAS LEASES--Continued

properly be rejected for the reason that it is too low, even though it is above the minimum set in the lease offer.

Pan American Petroleum Corp., A-29510 (Aug. 13, 1963)

The Secretary of the Interior in computing the basic royalty due the United States under a lease recognized and maintained under section 6 of the Outer Continental Shelf Lands Act, where it is to receive royalty on the value of gas produced rather than in kind, may properly look to the actual consideration to be received by its lessee-seller under gas sales contracts with a buyer in order to determine the proper value basis for the royalty; and a determination by the Geological Survey that a reimbursement to the seller for an amount due the United States by it as an additional royalty pursuant to section 6(a)(9) of that act constitutes part of the contract sales price for the gas and should be included in the total value basis for the basic royalty computation is proper, regardless of whether the reimbursement is specifically stated as separate from the contract price or is stated as being included in the total price in a settlement agreement approved by the Federal Power Commission.

Kerr-McGee Oil Industries, Inc., et al., A-29894 (Oct. 31, 1963) 70 I. D. 464

STATE LEASES

The Secretary of the Interior in computing the basic royalty due the United States under a lease recognized and maintained under section 6 of the Outer Continental Shelf Lands Act, where it is to receive royalty on the value of gas produced rather than in kind, may properly look to the actual consideration to be received by its lessee-seller under gas sales contracts with a buyer in order to determine the proper value basis for the royalty; and a determination by the Geological Survey that a reimbursement to the seller for an amount due the United States by it as an additional royalty pursuant to section 6(a)(9) of that act constitutes part of the contract sales price for the gas and should be included in the total value basis for the basic royalty computation is proper, regardless of whether the reimbursement is specifically stated as separate from the contract price or is stated as being included in the total price in a settlement agreement approved by the Federal Power Commission.

Kerr-McGee Oil Industries, Inc., et al., A-29894 (Oct. 31, 1963) 70 I. D. 464

PATENTS OF PUBLIC LANDS

GENERALLY

A patent issued pursuant to a color or claim of title must be in the name of all those claiming an interest in the land or in the name of a person designated by all claiming an interest in the land.

John W. Mecom et al., A-29548 (Sept. 19, 1963) 70 I. D. 446

Where final proof on a desert land entry is rejected within two years after issuance of a receipt for the money paid with the proof and new proof is filed and is rejected and the entry canceled in part within two years after the new proof is filed but more than two years after the receipt was issued, the entryman is not entitled to a patent pursuant to section 7 of the act of Mar. 3, 1891.

Marvin M. McDole, A-29376(Supp.) (Nov. 29, 1963) 70 I. D. 506

AMENDMENTS

An application under Revised Statutes sec. 2372 for amendment of patent to land which asks for a substitution of national forest land for land covered by the patent is properly rejected where the forest land has been reserved from entry.

Henry C. Cleek, A-29257 (Mar. 12, 1963)

RESERVATIONS

A protest against a public sale of lands unless a right-of-way for an existing public road be reserved is properly dismissed because if the road is a public highway within the provisions of section 2477 of the Revised Statutes the sale of the lands would be subject to the easement of the highway regardless of the absence of a reservation or exception in the patent and the protestant's rights are protected without inclusion of any reservation or exception in the patent.

Herb Penrose, A-29507 (July 26, 1963)

A homestead entryman who fails to earn equitable title to his entry before the Geological Survey reports that the land is prospectively valuable for oil and gas is properly required to petition for reclassification of the land as nonmineral in character or, failing to attempt or to obtain a favorable decision on a petition for reclassification, to accept a patent reserving to the United States the oil and gas deposits in the land and the right to develop them.

Clarence G. Beckhorn, A-29439 (Sept. 19, 1963)

PATENTS OF PUBLIC LANDS--Continued

SUITS TO CANCEL

In the absence of fraud, suits to vacate or annul a patent must be brought within six years of the issuance of the patent.

Doris L. Ervin et al., A-29393 (July 8, 1963)

PITTMAN ACT

A Pittman Act application is properly rejected for land within a basin for which there is a known supply of underground water.

John G. Speiden et al., A-29093 (July 1, 1963)

A Pittman Act application for a permit to explore for underground water will be rejected when there is a known source of groundwater under the land and the soils are not suitable for agricultural development because they are heavily saline-alkaline.

Lee Buck et al., A-29409 (Aug. 6, 1963)

POTASSIUM LEASES AND PERMITS

PERMITS

An application for a potassium prospecting permit is properly rejected when the land described in the application is determined to contain valuable deposits of potassium as of a time after the filing of the application.

Sawyer Petroleum Company, H. Bryon Mock, A-28916 (Jan. 31, 1963) 70 I. D. 9

PRACTICE BEFORE THE DEPARTMENT

GENERALLY

Where a notice of appeal and statement of reasons for an appeal to the Director of the Bureau of Land Management from a land office decision is filed in behalf of the appellant by one who is not authorized to practice before this Department, the appeal need not be dismissed if it is accepted by the appellant and a case may be remanded for consideration on the merits in such circumstances.

Barbara C. Storey, A-29584 (Sept. 26, 1963)

PERSONS QUALIFIED TO PRACTICE

An appeal to the Director of the Bureau of Land Management may but need not be dismissed when the notice of appeal and statement of reasons are filed by an attorney-in-fact who does not qualify as one entitled to practice before the Department.

E. H. Hamlet, Dr. Erwood George Edgar, A-29516 (Aug. 19, 1963)

While an appeal to the Director of the Bureau of Land Management is properly dismissed when it is prosecuted by an agent of the appellants who has not shown that he is authorized to practice before the Department, if the agent on appeal to the Secretary of the Interior states that he is a practicing attorney at law and the Director has also ruled on the mertis of the appeal, the appeal may be considered on its merits.

John W. Mecom et al., A-29548 (Sept. 19, 1963) 70 I. D. 446

PRESIDENT OF THE UNITED STATES

Although the Secretary of the Interior is by Executive Order No. 10355 authorized to exercise the power of the President to withdraw and reserve public domain and other lands owned or controlled by the United States, including the authority to modify or revoke past or future withdrawals or reservations, such power cannot be exercised over lands in a national forest without the approval or concurrence of the Secretary of Agriculture as required by Section 1(c) of the Executive Order.

Validity of Lease No. 14-20-600-5511, October 21, 1959, Between the Bureau of Indian Affairs, Lessor, and Flagstaff Foundation for Industrial Development, Lessee, M-36659 (Sept. 23, 1963) 70 I. D. 429

PRIVATE EXCHANGES

PUBLIC INTEREST

Private exchange applications are properly rejected where the offered lands are situated within the limits of an Air Force range and fee title to the lands is not required for purposes of the range and there are no compelling reasons to acquire the offered lands to augment any long range Federal resource management program; such exchanges are not in the public interest.

Philo Coombs Carter and Mary Cordelia Carter, A-28695 (Apr. 29, 1963

A private exchange application is properly rejected where the offered lands are situated within the limits of an Air Force range and there is no compelling reason to acquire the offered lands to augment any long range Federal resource management program.

Edward O. Earl and Madelon Earl, A-28567 (May 13, 1963)

PUBLIC LANDS

GENERALLY

The owner of riparian lots does not own public land within an unsurveyed island in a navigable stream lying between the riparian lots and the thread of the stream which was in existence when the State was admitted to the Union.

Pearl Christian, William Wesley Peters, A-29265 (May 31, 1963) 70 I. D. 193

CLASSIFICATION

Where public land has been classified as unsuitable for desert land entry and all pending applications are rejected by a decision of the Secretary of the Interior, the classification will not be reconsidered on the basis of unsupported statements that the classification is erroneous by one whose application was rejected.

Ethel Kruger Henry, Administratrix, Estate of Ernest H. Kruger, A-29310 (May 7, 1963)

PUBLIC LANDS--Continued

CLASSIFICATIONS--Continued

Under the moratorium order issued Feb. 14, 1961, the Director of the Bureau of Land Management is required, where an appeal is taken to him from the rejection of the appellant's application because of an adverse classification, to affirm the rejection if the appellant does not submit positive and substantial evidence that the classification is in error, and the Director will be sustained on appeal to the Secretary if it is found that such evidence was not submitted to the Director.

Duncan W. Cleaves, A-29354 (May 6, 1963)

After the Secretary has determined on appeal that action should be taken toward offering land for public sale, it is improper for the Bureau subsequently to again classify the land as unsuitable for sale where there is no evidence of any change in circumstances which would warrant such action.

Winston Wheeler and L. E. Phillips, Jr. D/B/A YZ Cattle Company, A-29649 (Aug. 26, 1963)

JURISDICTION OVER

In the absence of the approval or concurrence of the Secretary of Agriculture a Public Land Order purporting to exclude certain lands from a national forest and reserve them under the jurisdiction of the Bureau of Indian Affairs is ineffective to remove such lands from the jurisdiction of the Secretary of Agriculture, and a purported lease of such lands approved by the Assistant Secretary of the Interior pursuant to the Navajo-Hopi Rehabilitation Act of Apr. 19, 1950 (64 Stat 44; 25 U.S.C. sec. 631 et seq.), is invalid.

Validity of Lease No. 14-20-600-5511, October 21, 1959, Between the Bureau of Indian Affairs, Lessor, and Flagstaff Foundation for Industrial Development, Lessee, M-36659 (Sept. 23, 1963) 70 I.D. 429

LEASES AND PERMITS

In the absence of the approval or concurrence of the Secretary of Agriculture a Public Land Order purporting to exclude certain lands from a national forest and reserve them under the jurisdiction of the Bureau of Indian Affairs is ineffective to remove such lands from the jurisdiction of the Secretary of Agriculture, and a purported lease of such lands approved by the Assistant Secretary of the Interior pursuant to the Navajo-Hopi

PUBLIC LANDS--Continued

LEASES AND PERMITS--Continued

Rehabilitation Act of Apr. 19, 1950 (64 Stat. 44; 25 U.S.C. sec. 631 et seq.), is invalid.

Validity of Lease No. 14-20-600-5511, October 21, 1959, Between the Bureau of Indian Affairs, Lessor, and Flagstaff Foundation for Industrial Development, Lessee, M-36659 (Sept. 23, 1963) 70 I.D. 429

RIPARIAN RIGHTS

The rights acquired by the United States in the public domain are determined by the common law. Under the common law, as interpreted and applied by the Supreme Court, the United States, wherever it is a littoral or riparian proprietor of public domain, has a vested right to future accretions and relictions. Because of the nature of the Federal system, and by virtue of an express provision of the Constitution, no State can, by legislation or otherwise, deprive the United States of its right to relictions or accretions.

State of Utah, A-29043 (Feb. 18, 1963) 70 I.D. 27

The rejection of an offer for failure to comply with the 640-acre minimum limitation because nonnavigable river bed lands adjacent to the public land applied for were available for lease will be affirmed where appellant does not show that the river bed lands were not available for lease, as an offer for lease under the Mineral Leasing Act will not be accepted as an offer for the Government's riparian rights to the river bed lands unless such lands have been properly described and rentals submitted for them.

Clayton Phebus, 48 L.D. 128 (1921); A. W. Glassford, et al., 56 I.D. 88 (1937); Associate Solicitor's opinion M-36512 (July 29, 1958), overruled to extent inconsistent.

Emily K. Connell, A-29176 (May 7, 1963) 70 I.D. 159

The owner of riparian lots does not own public land within an unsurveyed island in a navigable stream lying between the riparian lots and the thread of the stream which was in existence when the State was admitted to the Union.

Pearl Christian, William Wesley Peters, A-29265 (May 31, 1963) 70 I.D. 193

PUBLIC LANDS--Continued

SPECIAL USE PERMITS

Where a special use permit to drill for water to demonstrate its availability for the reclamation of desert land is issued under the express condition laid down by the Secretary of the Interior that the permit shall be for a term not to exceed 18 months and shall not be renewable, the land office has no authority to extend or renew the permit, and a renewal or extension will not be granted where the permittee was not diligent in acting under it and land in the same area has subsequently been classified as unsuitable for agricultural development.

Loyd J. Robinson, A-29319 (May 7, 1963)

PUBLIC RECORDS

(See also Confidential Information)

An appeal from a decision reducing grazing privileges charging that such privileges were improperly allotted because some allottees misrepresented their base qualification to the Bureau does not entitle the appellant to the benefits of a readjudication of the base qualification of the allottees when the facts relied upon to sustain the charge of misrepresentation have been a matter of record since the inception of the Taylor Grazing Act program and available for the inspection of interested persons and the appellants have made no attempt to receive permission as provided in the pertinent regulation to inspect the records.

Foster L. Mills et al., A-29330 (Jan. 14, 1963)

PUBLIC SALES

GENERALLY

A public sale will be vacated where, before a cash certificate is issued, it is determined that the

PUBLIC SALES--Continued

GENERALLY--Continued

high bid made for the purchase of the tract is substantially below the fair market value of the land on the date of the sale.

Phoenix Title and Trust Company et al., A-28771 (June 21, 1963)

Public land subject to reclamation withdrawal cannot be sold at public sale and a sale application filed while the withdrawal remains in force is properly rejected.

Gino Martini, A-29467 (July 25, 1963)

A protest against a public sale of lands unless a right-of-way for an existing public road be reserved is properly dismissed because if the road is a public highway within the provisions of section 2477 of the Revised Statutes the sale of the lands would be subject to the easement of the highway regardless of the absence of a reservation or exception in the patent and the protestant's rights are protected without inclusion of any reservation or exception in the patent.

Herb Penrose, A-29507 (July 26, 1963)

When notice of a public sale of a rough, mountainous tract has been given by publication and posting, the sale will not be set aside because one interested in the sale did not receive personal notice of it.

Notice of an impending public sale by publication in a newspaper is adequate notice when the newspaper is one in circulation in the area in which part of the tract is located.

A statement by a Bureau employee that personal notice of a proposed public sale will be given to one is merely an extension of a courtesy and not the conferring of a right, since no law or regulation requires such personal notice.

Joseph Garcia Cholame Township Sportsmen's Association, A-29324, (Nov. 26, 1963)

Where, prior to the issuance of a cash certificate, a public sale was vacated on the ground that the sale did not accord with a subsequently announced Departmental policy and where that policy has been superseded by a broader policy which requires that the Government receive full value, the vacation of the sale will stand where the record

PUBLIC SALES--Continued

GENERALLY--Continued

shows that both the appraised value at which the land was offered and the amount of the high bid are less than the fair market value of the land at the date of sale.

Perley M. Lewis and Mildred C. Lewis, A-28707 (Dec. 30, 1963)

APPLICANTS

When a corporation which is declared the purchaser at a public sale is wholly owned by a parent corporation, it will be required to furnish the statement required by 43 CFR 250.12(b)(1) showing the extent of control of the stock of the parent corporation by aliens or persons having addresses outside of the United States as though the parent corporation were the purchaser.

Madge V. Rodda Lockheed Propulsion Company, A-29483 (Nov. 12, 1963) 70 I. D. 481

APPLICATIONS

A public sale application must be rejected where the land is withdrawn from settlement, location, sale, or entry.

Louis Signalness, A-29640 (Sept. 4, 1963)

A public sale application must be rejected where the land is withdrawn from settlement, location, sale, or entry.

Leonora W. Luntsford, A-29927 (Nov. 26, 1963)

AWARD OF LANDS

An award of lands offered at public sale between two preference-right claimants, which denies any award to a third preference-right claimant, will not be disturbed when none of the claimants presents convincing evidence that the award was unfair or based upon material error, and the award appears to have been properly made on the basis of the topography of the lands, desirable land pattern, and historical use of the lands.

E. H. Hamlet, Dr. Erwood George Edgar, A-29516 (Aug. 19, 1963)

PUBLIC SALES--Continued

AWARD OF LANDS--Continued

When two preference right claimants cannot come to an agreement as to the division of land, it is proper for the land office to award all of the tract to one claimant when considerations of topography, desirable use, land pattern, accessibility and need for the land favor the one claimant.

Madge V. Rodda Lockheed Propulsion Company, A-29483 (Nov. 12, 1963) 70 I. D. 481

In the absence of equitable considerations requiring otherwise, where only one subdivision is offered for sale and it adjoins the lands of two or more preference-right claimants, it will be awarded to the applicant for the sale if he is a qualified preference-right claimant.

C. Leo Kiefer, Genevieve C. Kiefer, A-29803 (Dec. 2, 1963)

CLASSIFICATION

Land which is properly classified for retention in Federal ownership may not be disposed of under the homestead law, the public sale law, or the small tract act.

Bert Leander Sargent et al., A-28809, A-29284 (Jan. 30, 1963)

Lands are properly classified as improper for disposal at public sale when sale of the lands would not serve a sound public purpose, simplify the land pattern, or improve the management of the public lands, and new road construction in the immediate locality indicates a future potential use of the lands for public recreational purposes.

New Canaan Development Company, Inc. A-29387 (Aug. 22, 1963)

After the Secretary has determined on appeal that action should be taken toward offering land for public sale, it is improper for the Bureau subsequently to again classify the land as unsuitable for sale where there is no evidence of any change in circumstances which would warrant such action.

Winston Wheeler and L. E. Phillips, Jr. D/B/A YZ Cattle Company, A-29649 (Aug. 26, 1963)

PUBLIC SALES--Continued

CLASSIFICATION--Continued

Classification of a rough, mountainous tract for public sale will not be set aside in the absence of a clear showing of error.

Joseph Garcia Cholame Township Sportsmen's Association, A-29324 (Nov. 26, 1963)

ISOLATED TRACTS

A tract of public land, otherwise isolated, which adjoins other public land covered by a stock driveway withdrawal, is isolated within the meaning of the pertinent regulation 43 CFR 250.6(b).

Ralph Faulkner, A-29385 (July 11, 1963)

Land valuable for gold is not subject to public sale.

Rosemon Willis, A-29538 (Aug. 27, 1963)

PREFERENCE RIGHTS

Where a preference right claimant fails to submit a statement of his citizenship and evidence of having reimbursed the applicant for a public sale for the costs of publication within the 10-day period after he is declared the purchaser, as provided by the Department's regulation, his bid is properly rejected, and the applicant for the sale whose bid is next in order is properly awarded the land; the fact that the preference right claimant actually paid the costs of publication does not excuse him from failure to comply with the regulation when the only evidence in the record indicates that the costs were paid by another party.

Ralph Faulkner, A-29385 (July 11, 1963)

The highest bidder at a public sale who fails to submit satisfactory evidence of his ownership of contiguous land within 30 days after the highest bid has been received loses his preference right and the land is properly awarded to a preference-right claimant who matches the highest bid.

The owner of land which corners land offered at public sale is not entitled to the preference to purchase accorded to owners of contiguous land.

PUBLIC SALES--Continued

PREFERENCE RIGHTS--Continued

A certificate of ownership of adjoining land which is signed by a deputy county clerk and recorder who is authorized to act for his superior is valid.

Louis J. Nelson, A-29532 (July 29, 1963)

Where an applicant is to be deprived of a statutory preference right because of his failure to comply with the requirements of a regulation, that regulation should be so clear that there is no basis for the applicant's noncompliance therewith.

The regulation requiring a corporate purchaser to furnish a copy of its articles of incorporation does not clearly require that the material be furnished within 10 days after the corporation is declared the purchaser, and a corporation will not be held to have lost its preference right for failure to submit the material within the 10-day period.

Madge V. Rodda Lockheed Propulsion Company, A-29483 (Nov. 12, 1963) 70 I. D. 481

In the absence of equitable considerations requiring otherwise, where only one subdivision is offered for sale and it adjoins the lands of two or more preference-right claimants, it will be awarded to the applicant for the sale if he is a qualified preference-right claimant.

C. Leo Kiefer, Genevieve C. Kiefer, A-29803 (Dec. 2, 1963)

RECREATION AND PUBLIC PURPOSES ACT

GENERALLY

An appeal against a grant of approval to a recreation and public purposes application will be dismissed when appellant is not a party nor authorized to act on behalf of a party, as will a protest when filed subsequent to the date permitted.

Deprivation of future ability to use land to which an appellant has no legal right is not a basis for rejecting a recreation and public purpose application.

Dr. Willard H. Howard, A-29283 (June 3, 1963)

REGULATIONS

(See also Administrative Procedure Act)

GENERALLY

Where the regulation in effect when an oil and gas lease offer is filed in the name of a partnership requires a certified copy of the articles of association and showings as to the qualifications of the member partners to accompany the offer, the mere reference by serial number to another case record where showings have been filed is not adequate and the offer is properly rejected.

George N. Keyston, Jr., Ltd., A-29133, A-29524 (May 7, 1963) 70 I. D. 156

Where a party is to be deprived of a statutory preference right because of his failure to comply with a requirement of a regulation, that regulation should be so clear that there is no basis for disregarding his noncompliance.

Jack V. Walker et al., A-29402, A-29540, A-29541, A-29565, A-29571 (July 22, 1963)

APPLICABILITY

The regulations governing the description of land in oil and gas lease offers for acquired lands of the United States are not applicable to offers for leases on public lands.

Charles J. Babington, A-29965 (Nov. 26, 1963)

INTERPRETATION

Where an applicant is to be deprived of a statutory preference right because of his failure to comply with the requirements of a regulation, that regulation should be so clear that there is no basis for the applicant's noncompliance therewith.

Madge V. Rodda Lockheed Propulsion Company, A-29483 (Nov. 12, 1963) 70 I. D. 481

Where an applicant is to be deprived of a statutory right because of his failure to comply with the requirements of a regulation, that regulation should be so clear that there is no basis for the applicant's noncompliance therewith.

William S. Kilroy et al., A-29650 (Dec. 13, 1963) 70 I. D. 520

REGULATIONS--Continued
(See also Administrative Procedure Act)

VALIDITY

When a Departmental regulation is inconsistent with, and without the provisions of, the law, it is invalid and will not be followed.

Continental Oil Company, Reversal Approved by Secretary May 15, 1963 70 I.D. 473

WAIVER

Where a small tract lessee who enters the military service gives notice of his entrance into military service after the six-month period in which such notice is required to be filed by departmental regulation, but he is notified that his lease has been extended by reason of his military service and in reliance thereon fails to take action necessary to renew his lease or purchase the leased land, the requirements of the regulation will be waived in the absence of any interest adverse to that of the lessee.

Kieth G. Wilson et al., A-29173 (Mar. 26, 1963)

RELICTION

The rights acquired by the United States in the public domain are determined by the common law. Under the common law, as interpreted and applied by the Supreme Court, the United States, wherever it is a littoral or riparian proprietor of public domain, has a vested right to future accretions and relictions. Because of the nature of the Federal system, and by virtue of an express provision of the Constitution, no State can, by legislation or otherwise, deprive the United States of its right to relictions or accretions.

State of Utah, A-29043 (Feb. 18, 1963) 70 I.D. 27

RES ADJUDICATA

The principle of res judicata or finality of administrative action will not be applied so as to prevent the Director of the Bureau of Land Management from reversing or correcting decisions of his subordinate officers where the matter remains within the jurisdiction of the Bureau.

Barney R. Colson, A-28617 (Sept. 16, 1963) 70 I.D.409

RIGHTS-OF-WAY

GENERALLY

Where an oil and gas lease is issued pursuant to the Mineral Leasing Act of 1920, as amended, for lands which at that time are embraced within a reservoir right-of-way, the lease must be canceled since the act of May 21, 1930, provides the exclusive authority to lease such lands; it is immaterial that subsequent to the issuance of the lease the right-of-way is terminated.

United Technical Industries, Inc., (Formerly Larsen Industries, Inc.) et al., A-29406 (Apr. 24, 1963)

Where an application for a right-of-way has been rejected on the ground that the land affected had passed to a State under the school land grant and it is shown that land is not in the State benefiting from the grant, the application will be reconsidered.

Ernest M. Pellkofer, A-29832 (Aug. 29, 1963)

ACT OF MARCH 3, 1891

Where an oil and gas lease is issued pursuant to the Mineral Leasing Act of 1920, as amended, for lands which at that time are embraced within a reservoir right-of-way, the lease must be canceled since the act of May 21, 1930, provides the exclusive authority to lease such lands; it is immaterial that subsequent to the issuance of the lease the right-of-way is terminated.

United Technical Industries, Inc., (Formerly Larsen Industries, Inc.) et al., A-29406 (Apr. 24, 1963)

RIGHTS-OF-WAY--Continued

APPLICATIONS

The grant of permission to construct a radio communications site in advance of approving a right-of-way application for the land is properly revoked when a State indemnity selection of the land is approved; it is immaterial that the application is not rejected since approval of the indemnity selection necessarily had that effect.

El Cajon Electronic Engineering Enterprises, A-29714 (Nov. 13, 1963)

CANCELLATION

The grant of permission to construct a radio communications site in advance of approving a right-of-way application for the land is properly revoked when a State indemnity selection of the land is approved; it is immaterial that the application is not rejected since approval of the indemnity selection necessarily had that effect.

El Cajon Electronic Engineering Enterprises, A-29714 (Nov. 13, 1963)

REVISED STATUTES SEC. 2477

A protest against a public sale of lands unless a right-of-way for an existing public road be reserved is properly dismissed because if the road is a public highway within the provisions of section 2477 of the Revised Statutes the sale of the lands would be subject to the easement of the highway regardless of the absence of a reservation or exception in the patent and the protestant's rights are protected without inclusion of any reservation or exception in the patent.

Herb Penrose, A-29507 (July 26, 1963)

RULES OF PRACTICE

GENERALLY

An Indian's written authorization for payment of her funds to a creditor, which has been filed with the Bureau of Indian Affairs during the lifetime of the Indian and not revoked by the Indian or disapproved by the Bureau, need not be resubmitted by the creditor as the basis for a claim against the estate of the Indian after her death; and the authorization so filed removes it from the application of the probate regulation which prohibits the filing of claims against Indian estates after the conclusion of the probate hearing.

Estate of Mary Ramona Diserly Youpee Brown, IA-1294 (Apr. 15, 1963) 70 I. D. 142

Until a land office or Director's decision rejecting an oil and gas lease offer becomes final or an appeal therefrom is taken, the defect in the offer may be cured by the offeror and considered further by the office in which the case is pending; however, priority of filing of the offer will be as of the date of the curative action rather than the original date of the filing of the offer.

M. J. Stansbury, A-29699 (Sept. 25, 1963)

The Director of the Bureau of Land Management may in the absence of an appeal to the Secretary, reconsider a previous decision on his own motion and correct any errors that may have been made in the former decision where the effect of the first decision has been prevented from becoming final by a court injunction which suspended any action taken by the Bureau.

George E. Conley, A-29634 (Oct. 18, 1963)

In Board of Contract Appeals procedures the "appeal file" consists of the notice of appeal, brief in support of the appeal, if any, all documents on which the contracting officer has relied in making his findings of fact or decision, statement of the government's position and supporting brief, and reply by appellant, if any. The "appeal record" consists of all these documents and of the transcript of conference (43 CFR 4.9), oral and written evidence presented by the parties pursuant to 43 CFR 4.11(a), the transcript of hearing, if any, and post-hearing briefs, if any.

One of the purposes of the "conference" provided in 43 CFR 4.9 is the determination of the completeness of the "appeal file" and to enable the parties to establish, preferably by agreement, the written "appeal record."

Appeal of C. W. "Bill" Lamb, IBCA-397 (Nov. 18, 1963) 70 I. D. 488

RULES OF PRACTICE--Continued

APPEALS

Generally

Under the moratorium order issued Feb. 14, 1961, the Director of the Bureau of Land Management is required, where an appeal is taken to him from the rejection of the appellant's application because of an adverse classification, to affirm the rejection if the appellant does not submit positive and substantial evidence that the classification is in error, and the Director will be sustained on appeal to the Secretary if it is found that such evidence was not submitted to the Director.

Duncan W. Cleaves, A-29354 (May 6, 1963)

An appeal against a grant of approval to a recreation and public purposes application will be dismissed when appellant is not a party nor authorized to act on behalf of a party, as will a protest when filed subsequent to the date permitted.

Dr. Willard H. Howard, A-29283 (June 3, 1963)

Where the Board of Contract Appeals finds, upon the basis of newly discovered evidence presented at a rehearing, that its prior decision was based largely on testimony that has been discredited, the prior decision will be vacated and the appeal will be remanded to the contracting officer for appropriate action.

Appeal of Richey Construction Company, IBCA-187 (June 18, 1963) 70 I.D. 222

Where a special private act renders moot the issue on an appeal from the rejection of an additional homestead application in Alaska, the appeal will be dismissed, the Bureau of Land Management decisions vacated, and the case remanded for further consideration and action in accordance with the provisions of the special act and the homestead laws.

Leo F. Reeves, A-27919 (June 25, 1963)

The Director of the Bureau of Land Management in reviewing on appeal the rejection of an application for a second enlarged homestead entry because of an adverse classification may properly make an initial determination that the applicant was not qualified to make a second homestead entry because it did not appear that his first entry was lost, forfeited, or abandoned through no fault of his own and because of

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

matters beyond his control.

Frank J. Orlando, A-29399 (July 1, 1963)

An appeal will be remanded to the contracting officer where the findings do not contain sufficient details as to the reasons for denial of a portion of the contractor's claim.

Appeal of Paul A. Teegarden, IBCA-382 (Sept. 11, 1963)

The Director of the Bureau of Land Management is not limited in his consideration of an appeal from a land office decision to the particular question raised by that appeal. He may, even in the absence of an appeal, take up any matter pending in any land office and dispose of it without waiting for a decision by the local land office.

Barney R. Colson, A-28617 (Sept. 16, 1963) 70 I.D. 409

While an appeal to the Director of the Bureau of Land Management is properly dismissed when it is prosecuted by an agent of the appellants who has not shown that he is authorized to practice before the Department, if the agent on appeal to the Secretary of the Interior states that he is a practicing attorney at law and the Director has also ruled on the merits of the appeal, the appeal may be considered on its merits.

John W. Mecom et al., A-29548 (Sept. 19, 1963) 70 I.D. 446

Where a claimant to public land alleges, by way of an appeal from a notice to remove his improvements from the land, based on a Secretarial decision that the claim is without validity, that he did not receive the Secretary's decision, the appeal will be disposed of, in the interest of administrative expediency, by sending to the claimant a copy of the Secretary's decision and by requiring the claimant to comply with the requirements of the notice within 90 days of his receipt of the Secretary's decision.

Robert L. Miller, A-29484 (Sept. 20, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

Where an appeal is taken from the rejection of a homestead application for the reason that a State selection has precedence and the State later states that the selection was not intended to apply to land in the status of that included in the homestead application, the appeal becomes moot and the case will be remanded for further consideration of the homestead application.

Norman A. Twitty, A-30016 (Sept. 26, 1963)

Since Field Solicitors do not have authority to determine either Reclamation or Indian irrigation claims under the annual Public Works Appropriation Acts, claims which may involve administrative determinations under both the Federal Tort Claims Act and under annual Public Works Appropriation Acts should be referred to the appropriate Regional Solicitors. They have full authority concerning both types of claims. The purpose of this holding is to prevent the fragmentary consideration of claims.

Claim of John C. Brock, TA-249 (Ir.) (Oct. 25, 1963) 70 I. D. 463

A Government motion to remand an appeal to the contracting officer for the preparation of supplemental findings of fact and decision is granted, where appellant remains silent.

Appeal of Gunther and Shirley Company and E. V. Lane Corporation, IBCA-352 (Nov. 7, 1963)

An offeror whose offer does not draw first priority in a drawing and whose offer is conditionally rejected subject to reinstatement in the event offers with higher priorities in the drawing do not ripen into leases need not appeal from the conditional rejection in order to preserve the priority of his offer.

Ann H. Babington, A-29679 (Nov. 26, 1963)

An offeror whose offer does not draw first priority in a drawing and whose offer is conditionally rejected subject to reinstatement in the event offers with higher priorities in the drawing do not ripen into leases need not appeal from the conditional rejection in order to preserve the priority of his offer.

Katherine M. Barker, A-29566 (Nov. 26, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

The Director of the Bureau of Land Management is not limited in his consideration of an appeal from a land office decision to the particular question raised by that appeal but may rule on matters not appealed from but decided by the land office in the decision appealed from.

Metaline Contact Mines et al., A-29707 (Dec. 11, 1963)

Dismissal

An appeal to the Secretary from a decision declaring an oil and gas lease to be automatically terminated for failure to pay rental on time will be dismissed to permit consideration of a petition by the appellant to reinstate the lease under the provisions of remedial legislation, subject to the right of the appellant to reinstate his appeal in the event the petition is denied.

Lillian Milton, A-29421 (Jan. 7, 1963)

An appeal to the Secretary of the Interior will be dismissed when it is withdrawn by the appellant.

L. N. Hagood, A-29528 (Jan. 25, 1963)

An appeal to the Secretary will be dismissed when it is in effect withdrawn.

Everett E. Dahl, William C. Roderick, A-29292a (Jan. 25, 1963)

An appeal to the Secretary will be dismissed when it is withdrawn by the appellant.

Katherine E. Knoblauch, A-29390a (Jan. 25, 1963)

An appeal to the Secretary will be dismissed when it is withdrawn by the appellant.

Walter and Helen Thomson MacEwen, A-29511 (Feb. 8, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

To assure adequate docket control consistent with a manner unprejudicial to appellant. Board will not keep an appeal in abeyance, but will dismiss it without prejudice to appellant's right of reinstatement.

Appeal of Electrical Constructors, IBCA-359 (Feb. 21, 1963)

An appeal to the Secretary from a decision declaring an oil and gas lease to be automatically terminated for failure to pay rental on time will be dismissed to permit consideration of a petition by the appellant to reinstate the lease under the provisions of remedial legislation, subject to the right of the appellant to reinstate his appeal in the event the petition is denied.

Midwest Oil Corporation, A-29202 (Mar. 6, 1963)

In absence of a contract provision of the "Suspension of Work" type, the Board lacks jurisdiction to make adjustments for a delay in fulfillment of a Government contract obligation.

Appeal of Martin K. Eby Construction Company, Inc., IBCA-355 (Mar. 8, 1963)

An appeal to the Secretary will be dismissed where it is withdrawn by the appellant.

Richard W. McKay, A-29469 (Mar. 14, 1963)

The Board of Contract Appeals does not have jurisdiction to administratively determine claims involving breaches of contract. Such appeals must be dismissed.

Appeal of Jensen-Rasmussen and Company and B-E-C-K Corporation, IBCA-363 (Mar. 14, 1963)

An appeal to the Secretary will be dismissed where the appellant evidences acquiescence in the decision appealed from an abandonment of his appeal.

Rowland Z. Lazar, A-29388 (Mar. 15, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Secretary will be dismissed when it is withdrawn by the appellant.

George L. Naylor, A-29705 (Apr. 10, 1963)

An appeal to the Secretary will be dismissed when it is withdrawn by the appellant.

O. B. Mobley, Jr., A-29896 (Apr. 12, 1963)

Where an appeal is taken to the Director, Bureau of Land Management, from a land office decision holding an original homestead claim and an additional homestead claim to be invalid and only a single filing fee is paid for the appeal, it is proper for the Director to dismiss the appeal as to the additional homestead claim.

Bernard R. Martin, A-29280 (Apr. 12, 1963)

An appeal to the Director from a hearing examiner's decision is properly dismissed where the notice of appeal is not filed with the examiner within the 10-day period provided by the Federal Range Code.

Preston W. Swapp, Administrator for the Estate of J. Edwin Swapp, A-29935 (Apr. 23, 1963)

An appeal to the Secretary will be dismissed where the appellant withdraws the application which was the subject of the appeal.

Thomas M. George, A-29981 (May 2, 1963)

An appeal to the Secretary will be dismissed where the appellants withdraw the applications which were the subject of the appeal.

Marcellus Palmer, Wanda Palmer, A-29550 (May 8, 1963)

An appeal to the Secretary will be dismissed when it is in effect withdrawn.

John S. King, A-29447 (May 27, 1963)

An appeal to the Secretary will be dismissed when it is withdrawn by the appellant.

Albert Leon Goldsmith, Naomi Gertrude Tresner, A-29042a (June 12, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Secretary will be dismissed when it is withdrawn by the appellant.

Frances M. Keys, A-29747 (June 25, 1963)

An appeal to the Secretary will be dismissed when it is withdrawn by the applicant.

Fred W. Housholder, A-30054 (July 5, 1963)

An appeal to the Director, Bureau of Land Management, is properly dismissed when the required filing fee is not paid within the time required, although the appellant claims that a check for the fee was enclosed with the notice of appeal.

An appeal to the Director, Bureau of Land Management, is properly dismissed when the notice of appeal and filing fee are transmitted to the land office after the expiration of the appeal period; the fact that the appellant may not have had actual notice of the decision appealed from on the date of service of the decision because it was not served on him personally is not a sufficient excuse for late filing of the appeal and fee when there was adequate service on him under the departmental rules of practice.

Dolly V. Morrison et al., A-29397a (July 8, 1963)

An appeal to the Secretary will be dismissed when it is withdrawn by the appellant.

George E. Hale, A-30053a (July 11, 1963)

An appeal to the Secretary will be dismissed when it is withdrawn by the appellant.

Allen Twitchell, A-30034 (July 12, 1963)

An appeal to the Secretary will be dismissed when it is withdrawn by the appellant.

Louis E. Peterson, A-29752 (July 17, 1963)

The Government motion to dismiss a contractor's appeal is denied, where the contractor specifically exempts and reserves a claim against the Government in the execution of a final settlement voucher.

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

It is well settled that the failure to except an item from a final settlement voucher has the effect of barring any claim based on such item. Therefore, a contractor who, in executing a final settlement voucher, fails to include a claims item, is barred from asserting it. Under such circumstances, motion to dismiss a claim will be granted.

Appeal of Moore Brothers Company, Inc., IBCA-336 (July 17, 1963)

An appeal to the Secretary will be dismissed when it is withdrawn by the appellant.

Connie Alvarez, Benjamin B. Alvarez, A-29390b (July 18, 1963)

An appeal, based on claims for increased unit prices due to extra work, first presented more than 5 years after contract completion and nearly 2 years following a previous appeal, will be dismissed, where, at the hearing of the previous appeal involving related claims under the same contract, the principal owner of the contractor-appellant testified that no claims were being made for increased costs of performing the extra work. The rule of estoppel prevents a party not only from litigating again what was actually litigated in the former case, but also from litigating what might have been litigated therein.

An appeal will be dismissed for lack of jurisdiction where the contractor's request for additional compensation is based on Government delay, in the absence of a clause of the "Suspension of Work" type.

An appeal will be dismissed where the contractor's request for additional compensation is based on overruns or underruns of estimated quantities and the items and variations involved do not meet the criteria of the peculiar contract provisions governing adjustment of unit prices in the event of such overruns or underruns.

Appeal of R. G. Brown, Jr., and Company, IBCA-356 (July 26, 1963)

Board will dismiss claim on withdrawal of it by appellant.

Appeal of C. C. Terry, IBCA-330 (July 30, 1963)

An appeal to the Secretary will be dismissed when it is in effect withdrawn.

James W. Hattox, A-29665 (Aug. 6, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Secretary will be dismissed when it is in effect withdrawn.

Grace B. Moss, A-29756 (Aug. 6, 1963)

An appeal to the Secretary will be dismissed when it is in effect withdrawn.

Clyde E. Moss. A-29687 (Aug. 6, 1963)

An appeal to the Secretary will be dismissed when it is in effect withdrawn.

Marvel Petroleum Corporation, A-30044a (Aug. 13, 1963)

When an appellant requests that his appeal be suspended or remanded, or defers materially its prosecution, for the purpose of facilitating reconsideration of the dispute at the contracting officer level, the appeal will be dismissed without prejudice to its subsequent reinstatement, in the event the dispute is not disposed of by agreement at that level.

Appeal of M. A. Garland Construction Company, IBCA-392 (Aug. 21, 1963)

To assure adequate docket control, in a manner consistent with contractual appeal rights, a request for an unduly long period within which to file a brief in support of the appeal will not be granted but a request for a dismissal of the appeal without prejudice to its reinstatement within the desired period will be granted.

Appeal of Sunset Construction, Inc., IBCA-388 (Aug. 29, 1963)

An appeal to the Director of the Bureau of Land Management from a hearing examiner's decision is properly dismissed where the appeal is not filed with the Director within the 30-day period provided by the Federal Range Code.

Howard Ainge, Vera Bell Ainge, A-30038 (Sept. 10, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Secretary will be dismissed where the application which is the subject of the appeal is withdrawn.

El Jiggs Ranch, A-29570 (Sept. 17, 1963)

An appeal to the Secretary from the rejection of oil and gas lease offers will be dismissed as to such offers as are later withdrawn by the appellant.

J. D. Simmons, A-29681 (Sept. 25, 1963)

Where a notice of appeal and statement of reasons for an appeal to the Director of the Bureau of Land Management from a land office decision is filed in behalf of the appellant by one who is not authorized to practice before this Department, the appeal need not be dismissed if it is accepted by the appellant and a case may be remanded for consideration on the merits in such circumstances.

Barbara C. Storey, A-29584 (Sept. 26, 1963)

To assure adequate docket control, in a manner consistent with contractual appeal rights, a request for an unduly long extension of time within which to determine the possibility of settlement by the parties, will not be granted, but the appeal will be dismissed upon consent of both parties, without prejudice to its reinstatement within an agreed period.

Appeal of Gunther and Shirley Company and E. V. Lane Corporation, IBCA-398 (Sept. 26, 1963)

An appeal to the Secretary will be dismissed when it is withdrawn by the appellant.

Bonita T. Bennion, Junius L. Bennion, A-29339-b (Oct. 2, 1963)

Upon request of an appellant an appeal will be dismissed without prejudice to its reinstatement within a prescribed period.

Appeal of James Hamilton Construction Company, IBCA-391 (Oct. 8, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Secretary will be dismissed when it is withdrawn by the appellant.

Alvin L. Funk, A-30130 (Oct. 10, 1963)

An appeal to the Secretary will be dismissed when it is withdrawn by the appellants.

Arambel and Ithurralde, A-29721 (Oct. 31, 1963)

When Board of Contract Appeals dismissed appeal without prejudice to its reinstatement, appellant is entitled to automatic reinstatement of the appeal on the docket of the Board.

Appeal of Electrical Constructors, IBCA-407 (Oct. 31, 1963)

An appeal to the Director of the Bureau of Land Management from a decision of a hearing examiner is properly dismissed where the appeal is not filed in the Office of the Director in Washington, D.C., within 30 days after receipt of the hearing examiner's decision and a copy of the appeal is not served upon the Bureau's State Director within the same period, as required by the Federal Range Code.

A. C. Caldwell, A-30103 (Nov. 5, 1963)

The Government's motion to dismiss an appeal predicated on the theory that certain claim items were not submitted to the contracting officer prior to final payment is denied, where the Government is aware of other pending timely claims. Final payment is not consummated under such circumstances.

Appeal of Erie Controls, Inc., IBCA-350 (Nov. 7, 1963)

An appeal to the Secretary will be dismissed when the appellant files a dismissal of the appeal.

Vannorman, Casey & Dick's Well Service Co., A-30141 (Nov. 7, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

The mailing of a supporting brief in a contract appeal to the Board of Contract Appeals instead of to the contracting officer is not so fundamental an error as to necessitate dismissal of the appeal.

Appeal of Vitro Corporation of America, IBCA-376 (Nov. 7, 1963) 70 I.D. 479

Where a contract appeal presents a genuine issue of material fact over which the Board of Contract Appeals has jurisdiction (such as the issue of whether a changed condition was encountered) that has not been submitted for decision on the record without a hearing, the contractor is entitled to a hearing at which evidence may be offered with respect to such issue: A motion to dismiss the appeal for failure to state a case on which any relief could be granted by the Board will be denied.

Appeal of Morgen & Oswood Construction Co., Inc., IBCA-389 (Nov. 21, 1963) 70 I.D. 495

An appeal to the Secretary from the rejection of an oil and gas lease offer will be dismissed when the appellant withdraws his offer.

Dean W. Rowell, A-30041 (Dec. 17, 1963)

Effect of

A new claim, first presented in appellant's Notice of Appeal, is outside the jurisdiction of the Board of Contract Appeals, and will be remanded to the contracting officer for preparation and issuance of new or supplemental findings of fact and decision.

Appeal of Divide Construction Company, IBCA-402 (Sept. 27, 1963)

Extensions of Time

Where an appellant files a timely request for an extension of time to file a statement of reasons in support of his notice of appeal and files a statement within the extension of time requested, although the request for extension is misfiled and not acted upon prior to the filing of the statement, the request may subsequently be

RULES OF PRACTICE--Continued

APPEALS--Continued

Extensions of Time--Continued

granted, thus making timely the filing of the statement of reasons and service of a copy of the statement on an adverse party.

Charles Lewellen, A-29644 (Nov. 5, 1963)
70 I. D. 475

Hearings

An interlocutory decision upon a contract appeal denying a motion to dismiss the appeal for lack of timely notice or protest, or denying a motion for summary judgment, leaves the appeal open for the presentation of evidence upon all disputed question of material fact, including such a question as whether the Government was prejudiced by lack of timely notice or protest.

Appeal of Korshoj Construction Company, IBCA-321 (Sept. 27, 1963) 70 I. D. 434

Where a contract appeal presents a genuine issue of material fact over which the Board of Contract Appeals has jurisdiction (such as the issue of whether a changed condition was encountered) that has not been submitted for decision on the record without a hearing, the contractor is entitled to a hearing at which evidence may be offered with respect to such issue: A motion to dismiss the appeal for failure to state a case on which any relief could be granted by the Board will be denied.

Appeal of Morgen & Oswood Construction Co., Inc., IBCA-389 (Nov. 21, 1963) 70 I. D. 495

Service on Adverse Party

An appeal to the Secretary will be dismissed where the appellant has failed to serve an adverse party with a copy of his notice of appeal and statement of reasons.

Claud W. Orr, A-29838 (Feb. 26, 1963)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to serve a copy of his statement of reasons on the adverse party.

Gordon C. Jensen, A-29305 (Apr. 22, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Service on Adverse Party--Continued

An appeal to the Secretary of the Interior will be dismissed when the appellants fail to serve a copy of their notice of appeal and statement of reasons on the adverse party named in the decision appealed from.

Roy and Ida Mae Hightower, A-29785 (Apr. 26, 1963)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant is unable to prove that he served a copy of his statement of reasons for the appeal upon the adverse party named in the decision appealed from within the time required by this Department's Rules of Practice; his affidavit that he mailed a copy to the adverse party is insufficient where the adverse party denies receiving the copy alleged to have been mailed.

Sidney H. Smyth, et al., A-29949 (May 21, 1963)

A departmental decision affirming the dismissal of an appeal by the Director, Bureau of Land Management, for the appellant's failure to serve the adverse party with his appeal documents will be vacated and the dismissal reversed where the appellant proves, although very belatedly, that such service was in fact made.

Joseph Q. Clark, A-29581 (Supp.) (May 29, 1963)

A written statement by an appellant that he personally served a copy of his notice of appeal, including his statement of reasons, on an adverse party is acceptable as proof of service when the statement shows that the service was made within 15 days of the filing of the notice of appeal and when the statement is filed in the proper office within 15 days after service.

Pearla (Michele) Holmes LaFleur Robert L. Collopy and Don E. Silvers, A-29328 (July 15, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Service on Adverse Party--Continued

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to serve a copy of the statement of reasons for her appeal on the adverse party named in the decision appealed from in accordance with the Department's rules of practice.

Lena J. Lotspeich, A-30045 (Aug. 13, 1963)

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appelants fail to serve a copy of their statement of reasons on the adverse party.

Sam Mobley, Anel C. Mobley, A-29998 (Aug. 14, 1963)

An appeal to the Secretary will be dismissed where the appellant has failed to serve an adverse party with a copy of his notice of appeal.

Wilshire Management Co., Inc., A-30010 (Sept. 11, 1963)

Where following the dismissal of an appeal because of the appellant's failure to serve an adverse party it appears that he went to the address of the adverse party with the seeming intent to make service, but there is disagreement as to whether he made the intent known, the dismissal of the appeal will be vacated.

Roy and Ida Mae Hightower, A-29785 (Supp.) (Sept. 23, 1963)

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appelants fail to serve a copy of their statement of reasons on the adverse party.

United States v. Anna R. Briggs and Joseph A. Briggs, A-30107 (Nov. 5, 1963)

Where an appellant files a timely request for an extension of time to file a statement of reasons in support of his notice of appeal and files a statement within the extension of time requested, although the request for extension is misfiled and not acted upon prior to the filing of the statement, the request may subsequently be

RULES OF PRACTICE--Continued

APPEALS--Continued

Service on Adverse Party--Continued

granted, thus making timely the filing of the statement of reasons and service of a copy of the statement on an adverse party.

Charles Lewellen, A-29644 (Nov. 5, 1963) 70 I.D. 475

An appeal to the Director, Bureau of Land Management, is properly dismissed when the appellant fails to serve a copy of her notice of appeal on the adverse party named in the decision appealed from in accordance with the Department's rules of practice.

United States v. Lorraine McNeely Beard, A-29947 (Dec. 2, 1963)

Standing to Appeal

A decision by a hearing examiner denying a motion to vacate a decision of a district manager of a grazing district on only one of the issuesraised by an appeal from the district manager's decision and indicating that a hearing would be held on other issues raised by the appeal is not a final disposition of the appeal but is in the nature of an interlocutory decision which is not appealable prior to the rendering of a decision by the hearing examiner on the merits of the whole appeal, and an appeal from such a decision will be dismissed as premature.

Where a hearing examiner limits testimony to one of the issues raised by an appeal to him from a decision of a district manager of a grazing district, renders a decision thereon, and orders a hearing on the remaining issues raised by the appeal, an appeal to the Director, Bureau of Land Management, from the hearing examiner's decision on that phase of the appeal may be deferred until the hearing examiner renders his decision on the remaining issues.

Newell A. Johnson et al., A-29236 (July 31, 1963) 70 I.D. 388

The Arizona State Highway Department has no standing to appeal from a decision rejecting its free use applications for sand and gravel deposits when the rejection is based on the ground that the lands containing the deposits have been patented to the State of Arizona and the sand and gravel were not excepted from the patents by the mineral reservations contained in the patents.

Arizona State Highway Department, A-29325 (Oct. 21, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons

When no statement of reasons for an appeal to the Director of the Bureau of Land Management is filed, the appeal is properly dismissed.

When a statement of reasons for an appeal to the Director of the Bureau of Land Management is not transmitted to the office of the Director within 30 days after the notice of appeal is filed, the appeal is properly dismissed.

George A. Henderson et al., A-29790 (Jan. 15, 1963)

A statement of reasons for an appeal to the Secretary of the Interior which is not responsive to the issues determined by the decision appealed from but addresses itself to another case affords no basis for a determination of the charge of error in the decision appealed from, and the appeal will be dismissed.

The Estate of James Shaw, A-29156 (Jan. 24, 1963)

An appeal to the Secretary will be dismissed where no statement of reasons is filed in support of the appeal.

United States v. Lelia Pearl Irish et al., A-29837 (Jan. 29, 1963)

An appeal to the Secretary will be dismissed where no statement of reasons is filed in support of the appeal.

George W. Collinson, A-29142a (Feb. 26, 1963)

An appeal to the Secretary will be dismissed where no statement of reasons is filed in support of the appeal.

Alvin U. Leibson et al., A-29877 (Feb. 26, 1963)

An appeal to the Director is properly dismissed where no statement of reasons is filed in support of the appeal.

Henry Wuya, A-29915 (Apr. 2, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

A notice of appeal from a land office decision which challenges both grounds of the land office action and states facts which the appellant believes will nullify the first ground and promises the later submission of evidence to nullify the second satisfies the requirement for a timely and adequate statement of reasons for the appeal and it is immaterial that the evidence is submitted after the expiration of the time allowed for the filing of a statement of reasons for an appeal.

George Henry Rodda, Jr., A-29285 (Apr. 12, 1963)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file a statement of reasons in support of his appeal as required by the Department's rules of practice.

John P. De Valle, Jr., A-29835 (Apr. 26, 1963)

An appeal to the Secretary will be dismissed where no statement of reasons is filed in support of the appeal.

Helen Louise Fenwick et al., A-29474 (Apr. 29, 1963)

An appeal to the Director, Bureau of Land Management, is properly dismissed when the appellant fails to point out any specific error in the decision appealed from and alleges only that the decision has no basis in fact.

Duncan W. Cleaves, A-29354 (May 6, 1963)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to mail his statement of reasons for the appeal until after the expiration of the period within which it was required to be filed even though it was received within the 10-day period of grace provided in 43 CFR 221.92(b).

Santa Cruz Lumber Company, A-29978 (May 23, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file a statement of reasons in support of his appeal as required by the Department's rules of practice.

Henry F. Kolar, A-29972 (May 23, 1963)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file a statement of reasons in support of his appeal as required by the Department's rules of practice.

Thomas E. Rice, Jr., A-29424 (May 23, 1963)

An appeal to the Secretary will be dismissed where no statement of reasons is filed in support of the appeal.

Rangely School District No. Re 4, A-29175a (June 3, 1963)

An appeal to the Secretary will be dismissed when the appellant fails to file a statement of reasons in support of the appeal.

Jacob N. Wasserman, A-29708,(July 15, 1963)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file a statement of reasons in support of his appeal as required by the Department's rules of practice.

Edward Francis Graven v. Orville Rex Jandt, A-30027 (Aug. 13, 1963)

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appellant fails to file a statement of reasons for the appeal within the time allowed under the Department's rules of practice.

Henry Camarot, Sr., A-30070 (Aug. 13, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

When an appellant does not file a statement of reasons in his appeal to the Director, Bureau of Land Management, within the time prescribed by regulation, the appeal must be dismissed.

Palm Springs Unified School District, A-30057 (Aug. 13, 1963)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file a statement of reasons in support of his appeal as required by the Department's rules of practice.

Lee Arthur Moon, A-29955 (Aug. 13, 1963)

Fannin Brothers, A-29990 (Aug. 13, 1963)

A notice of appeal which states merely that the decision appealed from is contrary to the law and facts is not a sufficient specification of error to constitute a statement of reasons for an appeal required by the rules of practice and the appeal will be dismissed when no subsequent statement of reasons is filed in support thereof.

Edward G. Gee, A-30042 (Aug. 26, 1963)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the statement of reasons for the appeal is not filed with the notice of appeal and is later filed in the office of the State Director instead of the office of the Director in Washington, D.C. after the period allowed for filing and is subsequently forwarded to the office of the Director.

Jack T. Belcher, A-30105 (Aug. 27, 1963)

An appeal to the Director of the Bureau of Land Management is properly dismissed for failure to point out any reasons of error in the decision appealed from when the appellant merely explained that the improper placement of a signature on an oil and gas lease offer form was simply done through inadvertence and mistake and requested consideration of new forms, but such forms were not submitted.

M. J. Stansbury, A-29699 (Sept. 25, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

Appeals to the Secretary will be dismissed when statements of reasons have not been filed within the time required to support the appeals.

Margaret E. Reynolds et al., A-30102 (Oct. 2, 1963)

When no statement of reasons for an appeal to the Secretary of the Interior is filed within the time allowed and thereafter the appellant seeks to incorporate by reference the statement of reasons previously filed by him on his appeal to the Director, the appeal will be dismissed.

United States v. Lane Minerals, Inc., A-30086 (Oct. 11, 1963)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to mail her statement of reasons for the appeal until after the expiration of the period within which it was required to be filed even though it was received within the 10-day period of grace provided in 43 CFR 221.92(b).

Elgie M. Masson, A-30110 (Nov. 5, 1963)

An appeal to the Director, Bureau of Land Management, is properly dismissed when the appellant fails to point out any specific error in the decision appealed from and alleges only that the decision is erroneous in whole or in part.

Joann E. Horner, A-30108 (Nov. 5, 1963)

Where an appellant files a timely request for an extension of time to file a statement of reasons in support of his notice of appeal and files a statement within the extension of time requested, although the request for extension is misfiled and not acted upon prior to the filing of the statement, the request may subsequently be granted, thus making timely the filing of the statement of reasons and service of a copy of the statement on an adverse party.

Charles Lewellen, A-29644 (Nov. 5, 1963) 70 I.D. 475

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

In determining whether a notice of appeal from a decision of a contracting officer states with sufficient particularity the grounds of the appeal, the notice is to be read in conjunction with documents contained in the appeal file that are referred to in the notice.

Appeal of Vitro Corporation of America, IBCA-376 (Nov. 7, 1963) 70 I.D. 479

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to file a statement of reasons for her appeal.

Mildred I. LaGore, A-30156 (Dec. 13, 1963)

An appeal to the Director, Bureau of Land Management, is properly dismissed when the appellant fails to transmit a statement of reasons in support of his appeal within the period required by the Department's rules of practice although the statement is received within the 10-day grace period provided for in the rules.

James H. Fuqua, A-30194 (Dec. 16, 1963)

When no statement of reasons for an appeal to the Secretary of the Interior is filed, the appeal will be dismissed.

George Riley Baker, Margaret Baker, A-30111 (Dec. 16, 1963)

When no statement of reasons for an appeal to the Secretary of the Interior is filed, the appeal will be dismissed.

William B. Collister, A-30112 (Dec. 16, 1963)

When no statement of reasons for an appeal to the Secretary of the Interior is filed, the appeal will be dismissed.

George A. Ziegler, A-30144 (Dec. 16, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appellant fails to file a statement of reasons in support of the appeal.

John Martin Pearson, A-29674 (Dec. 18, 1963) 70 I. D. 523

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file any statement of reasons for the appeal.

William H. Riley, A-29987 (Dec. 24, 1963)

Timely Filing

An appeal to the Secretary must be dismissed when the notice of appeal is mailed after the end of the 30-day period in which it is required to be filed.

Isaac Glen Krieger, A-29855a (Jan. 3, 1963)

An appeal to the Secretary of the Interior from a decision of the Director, Bureau of Land Management, will be dismissed where the notice of appeal and the filing fee were not transmitted to the Director until after the period allowed for the filing of a notice of appeal had expired.

George R. Rowe, A-29049 (Jan. 22, 1963)

An appeal to the Secretary of the Interior from a decision of the Director of the Bureau of Land Management will be dismissed when the notice of appeal is not filed within the 30-day period prescribed by the Department's rules of practice and, although received during the 10-day grace period, was not transmitted within the 30-day period.

Doris E. McCluskey Myren, A-29910 (Mar. 6, 1963)

An appeal to the Secretary of the Interior from a decision of the Director of the Bureau of Land Management must be dismissed when the notice of appeal was not filed within the 30-day period prescribed by the Department's rules of practice and, although received during the 10-day grace period, was not transmitted within the 30-day period.

Wayne Cole, A-29951 (Apr. 1, 1963)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

An appeal to the Secretary of the Interior from a decision of the Director of the Bureau of Land Management will be dismissed when the notice of appeal is not filed within the 30-day period prescribed by the Department's rules of practice and, although received during the 10-day grace period, was not transmitted within the 30-day period.

Oscar H. Gustafson, Ena H. Gustafson, A-29980 (Apr. 29, 1963)

An appeal to the Secretary of the Interior from a decision of the Director of the Bureau of Land Management will be dismissed when the notice of appeal is not filed within the 30-day period prescribed by the Department's rules of practice and, although received during the 10-day grace period, was not transmitted within the 30-day period.

Fred J. Caron, A-29984 (Apr. 29, 1963)

An appeal to the Secretary of the Interior from a decision of the Director of the Bureau of Land Management will be dismissed when the notice of appeal is not filed within the 30-day period prescribed by the Department's rules of practice and, although received during the 10-day grace period. was not transmitted within the 30-day period.

Laytonville High School Willits Unified School District, A-29967 (Apr. 29, 1963)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to mail his statement of reasons for the appeal until after the expiration of the period within which it was required to be filed even though it was received within the 10-day period of grace provided in 43 CFR 221. 92(b).

Santa Cruz Lumber Company, A-29978 (May 23, 1963)

The limitation upon the time for taking appeals imposed by the "Disputes" clause of the standard forms of Government contracts is jurisdictional. An appeal from a decision of the contracting officer must be dismissed if it was not taken before the end of the thirtieth day after the receipt of the decision by the contractor, or before the end of the next business day if the thirtieth day falls on a Sunday or Federal holiday, unless the appeal involves only questions of law. Such

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

limitation may not be waived or extended once the 30 days have run.

Appeal of Lewis Construction Company, Inc. and S. L. Boutelle, IBCA-340 (July 3, 1963) 70 I.D.352

An appeal to the Director of the Bureau of Land Management is properly dismissed when the statement of reasons for the appeal is not filed with the notice of appeal and is later filed in the office of the State Director instead of the office of the Director in Washington, D.C. after the period allowed for filing and is subsequently forwarded to the Office of the Director.

Jack T. Belcher, A-30105 (Aug. 27, 1963)

Under a Government contract that contains the usual form of "disputes" clause, an appeal from a findings of fact and decision of the contracting officer must be dismissed if the notice of appeal was not mailed or otherwise furnished to the contracting officer within the 30 days specified in the contract.

The timeliness of an appeal is governed by the time elapsed between the date when the findings of fact and decision were received by the contractor and the date when the notice of appeal was mailed by him to the contracting officer. The circumstance that the last day of the appeal period falls on a Saturday is immaterial and does not extend the appeal period.

Appeal of the Cardell Co., IBCA-384 (Sept. 3, 1963) 70 I.D. 405

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to mail her statement of reasons for the appeal until after the expiration of the period within which it was required to be filed even though it was received within the 10-day period of grace provided in 43 CFR 221.92(b).

Elgie M. Masson, A-30110 (Nov. 5, 1963)

An appeal to the Director, Bureau of Land Management, is properly dismissed when the appellant fails to transmit a statement of reasons in support of his appeal within the period required by the Department's rules of practice although the statement is received within the 10-day grace period provided for in the rules.

James H. Fuqua, A-30194 (Dec. 16, 1963)

RULES OF PRACTICE--Continued

EVIDENCE

An appeal involving a claim for additional compensation based on the contract price for deleted work not performed, will be denied where the contractor fails to submit evidence of the costs of materials and labor claimed to have been incurred in anticipation of the performance of the deleted work.

Appeal of Cecil Schweighardt, IBCA-293 (Mar. 4, 1963) 70 I.D. 85

Where the Board of Contract Appeals finds, upon the basis of newly discovered evidence presented at a rehearing, that its prior decision was based largely on testimony that has been discredited, the prior decision will be vacated and the appeal will be remanded to the contracting officer for appropriate action.

Appeal of Richey Construction Company, IBCA-187 (June 18, 1963) 70 I.D. 222

In determining such matters as the date when particular work was done, entries in job diaries made at the time of the events related in them are entitled to a higher degree of creditability, in the absence of overriding considerations to the contrary, than affidavits made at a materially later date.

Appeal of Phoenix Floor & Tile Co., IBCA-312 (Aug. 22, 1963)

The parol evidence rule does not preclude the introduction of parol evidence for the purpose of showing whether a particular document was or was not adopted as an integration of the contract between the parties. Nor does it preclude the introduction of parol evidence for the purpose of showing that prior to the date borne by the integration a contract had actually been made, which was subsequently merged into or discharged by the integration.

Appeal of Baldwin-Lima-Hamilton Corporation, IBCA-329 (Sept. 20, 1963) 70 I.D. 426

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS

Action by the Bureau of Land Management in rejecting a mineral patent application and in declaring the mining claims in the application null and void is proper when the claimant fails to answer a contest complaint charging that the claims are invalid and the rules of practice provide that failure to answer will be taken as an admission of the charges.

United States v. Bradley-Turner Mines, Inc., A-29813 (Nov. 19, 1963)

HEARINGS

Where a hearing examiner's decision contains a ruling, in a single sentence, on all of the proposed findings and conclusions submitted by a party to a hearing, and the ruling on each finding and conclusion is clear, there is no requirement that the examiner rule separately as to each of the proposed findings and conclusions individually.

Where the factual findings upon which an examiner's decision are based are stated clearly in a decision, it is not essential that a separate part of the decision be designated "findings of fact."

United States v. Joe Driear, A-28925 (Jan. 31, 1963) 70 I. D. 10

Where the Board of Contract Appeals finds, upon the basis of newly discovered evidence presented at a rehearing, that its prior decision was based largely on testimony that has been discredited, the prior decision will be vacated and the appeal will be remanded to the contracting officer for appropriate action.

Appeal of Richey Construction Company, IBCA-187 (June 18, 1963) 70 I. D. 222

There is no occasion for having a hearing on the question as to whether an oil and gas lease is saved from automatic termination for nonpayment of rental because it has a well capable of producing oil or gas in paying quantities where there is no indication that the lessee accepts the Department's interpretation as to what constitutes such a well and is prepared to submit evidence in accordance with that interpretation.

Joseph C. Sterge, A-29348 (July 26, 1963) 70 I. D. 375

RULES OF PRACTICE--Continued

HEARINGS--Continued

When a contract appeal involves a disputed issue of fact, each party is entitled to a hearing for the purpose of offering evidence upon such issue, and, if either party does request a hearing, a decision upon the merits of the appeal without holding the requested hearing would be premature. The rules and procedures of the Board of Contract Appeals do not provide for summary judgment in favor of either party.

Appeal of Baldwin-Lima-Hamilton Corporation, IBCA-329 (Sept. 20, 1963) 70 I. D. 426

PRIVATE CONTESTS

A contest brought against a homestead entry which alleges only facts reflected by the Bureau records to constitute a charge relied upon to invalidate the entry is properly dismissed as to such charge.

Margaret L. Gilbert v. Bob H. Oliphant, A-29163 (Apr. 11, 1963) 70 I.D. 128

Although the rights of a homestead settler on public lands covered by an existing entry attach instantly on the relinquishment of the prior entry and are superior to those of settlers or applicants initiating their rights later, such a settlement is nevertheless subject to the superior right of a contestant who secures the cancellation of the entry.

An allegation in a private contest complaint filed immediately after the end of the second entry year which charges that the entryman failed to have under cultivation 1/16 of the acreage meets the requirements of the regulation that a contest complaint must allege in clear and concise language the facts which constitute the grounds for the contest.

Charles Lewellen, A-29644 (Nov. 5, 1963) 70 I. D. 475

A private contest brought against a desert land entry which alleges facts not reflected by records of the Bureau of Land Management at the initiation of the contest which, if proved, would invalidate the entry may be upheld notwithstanding some of the facts alleged may have been known to some Bureau personnel prior to the filing of the complaint.

A contest may be dismissed if not properly corroborated, but such action will not prevent the

RULES OF PRACTICE--Continued

PRIVATE CONTESTS--Continued

consideration of a second contest complaint, properly corroborated, by the same party, even though the charges therein are the same as those contained in the first.

A desert land entry is properly canceled where the entryman fails to answer a complaint filed in a private contest against the entry which charges that the entryman has not met the reclamation requirements of the desert land law.

F. Don Wadsworth v. Don Farrell Anhder, Sr., A-29684 (Dec. 31, 1963) 70 I. D. 537

PROTESTS

An appeal against a grant of approval to a recreation and public purposes application will be dismissed when appellant is not a party nor authorized to act on behalf of a party, as will a protest when filed subsequent to the date permitted.

Dr. Willard H. Howard, A-29283 (June 3, 1963)

SCHOOL LANDS

GENERALLY

Where title to a certain lot revested in the United States upon the revocation in 1856, with the consent of the parties concerned, of approval of a State school selection made under the act of May 20, 1826, rescission of the revocation is properly denied where it is requested by persons claiming to have acquired title to the lot in 1938 but who show no reasons for disturbing the action taken over 100 years earlier.

Heirs of Joseph A. Troxclair et al., A-29194 (Mar. 1, 1963)

SCHOOL LANDS--Continued

GRANTS OF LAND

Where title to a certain lot revested in the United States upon the revocation in 1856, with the consent of the parties concerned, of approval of a State school selection made under the act of May 20, 1826, rescission of the revocation is properly denied where it is requested by persons claiming to have acquired title to the lot in 1938 but who show no reasons for disturbing the action taken over 100 years earlier.

Heirs of Joseph A. Troxclair et al., A-29194 (Mar. 1, 1963)

INDEMNITY SELECTIONS

Section (a)(3) of the Act of Aug. 27, 1958 (72 Stat. 928, 43 U.S.C., sec. 852), does not authorize the selection of lands which have been probed by core drilling and extensive exploration work to the extent that the boundaries and quantity of a valuable deposit of mineral are well defined and the mineral within such deposit is known to be of such quality as to warrant expenditure of funds for extraction.

Utah Indemnity Selections, Cane Creek Potash Area, M-36645 (Dec. 17, 1962) 70 I. D. 71
See Attorney General Opinion, 70 I. D. 65 "To the Contrary."

A decision denying a State application to select public land as indemnity for granted school land lost to it will be remanded for further consideration of the mineral character of the land when, on appeal to the Secretary of the Interior, the State presents evidence tending to show that the selected lands are nonmineral.

State of California, A-29002 (Feb. 5, 1963)

Where title to a certain lot revested in the United States upon the revocation in 1856, with the consent of the parties concerned, of approval of a State school selection made under the act of May 20, 1826, rescission of the revocation is properly denied where it is requested by persons claiming to have acquired title to the lot in 1938 but who show no reasons for disturbing the action taken over 100 years earlier.

Heirs of Joseph A. Troxclair et al., A-29194 (Mar. 1, 1963)

SCHOOL LANDS--Continued

INDEMNITY SELECTIONS--Continued

The approval by the Department of a State indemnity school land application passes title to the State and deprives the Department of further jurisdiction over the land.

El Cajon Electronic Engineering Enterprises, A-29714 (Nov. 13, 1963)

SCRIP

GENERALLY

The recordation pursuant to the act of August 5, 1955, of documents to show forest lieu selection rights is simply considered as evidence to meet the requirements under that act and is not a recognition by this Department of the validity of such claim and does not augment any rights of the claimant.

Where land claimed as the basis for a forest lieu selection right has been reconveyed to the original owner prior to any selection being made, the selection right is extinguished and this Department cannot recognize any such selection rights alleged by a purported agent or transferee of the owner, as forest lieu selection rights are not assignable.

Richard M. Lade, As Attorney In Fact For Santa Fe Pacific Railroad Company, A-29121 (Jan. 10, 1963)

Where land claimed as the basis for a forest lieu selection right has been reconveyed to the original owner prior to any selection being made, the selection right is extinguished and this Department cannot recognize any such selection rights alleged by a purported agent or transferee of the owner, as forest lieu selection rights are not assignable.

Battle Mountain Company, As Attorney In Fact For Santa Fe Pacific Railroad Company, A-29146 (Jan. 31, 1963)

SCRIP--Continued

GENERALLY--Continued

Selections in satisfaction of Valentine scrip rights of lands within the area of a Bureau of Land Management forest management program which contain valuable commercial timber and are a vital and integral part of the Bureau's sustained yield forest management program are properly rejected because disposal of the lands would be detrimental to the sustained yield management program.

Carl E. Forsberg, Casper Joseph Schmand, A-29158, A-29159 (Aug. 19, 1963)

Lands located in satisfaction of McKee scrip which have been withdrawn by Executive Order 6910 are subject to classification under section 7 of the Taylor Grazing Act before the location can be approved.

A location in satisfaction of McKee scrip rights for lands within the area of a Bureau of Land Management forest management program which contain valuable commercial timber and are a vital and integral part of the Bureau's sustained yield forest management program is properly rejected because disposal of the lands would be detrimental to the sustained yield program.

Any statements made by Bureau of Land Management employees that certain lands may be available and suitable for scrip location do not bind this Department to classify the lands for that purpose and the location may be rejected if the lands are properly classified as more valuable and suitable for retention in Federal ownership for a different purpose.

Property Management Company, A-29144 (Aug. 19, 1963)

An application to select in lieu of land relinquished under the acts of July 1, 1898, and February 27, 1917, lands within the area of a Bureau of Land Management forest management program which contain valuable commercial timber and are a vital and integral part of the Bureau's sustained yield forest management program is properly rejected because disposal of the land would be detrimental to the sustained yield program.

Casper Joseph Schmand, Attorney in Fact for Mike Swab, A-29451 (Aug. 19, 1963)

SCRIP--Continued

RECORDATION

The recordation pursuant to the act of August 5, 1955, of documents to show forest lieu selection rights is simply considered as evidence to meet the requirements under that act and is not a recognition by this Department of the validity of such claim and does not augment any rights of the claimant.

Richard M. Lade, As Attorney In Fact For Santa Fe Pacific Railroad Company, A-29121 (Jan. 10, 1963)

Where all the documents relating to a partial assignment of a soldiers' additional homestead right have been presented timely to the Director, Bureau of Land Management, by a land office in connection with applications seeking to exercise part of the right assigned and the right is found valid to the extent asked, the balance of the right is not to be denied validity several years later on the ground that the assignee had not presented it for recordation within the period prescribed by the statute and regulations.

Jack V. Walker, A-29804 (Dec. 31, 1963)
70 I.D. 535

SPECIAL TYPES OF SCRIP

The recordation pursuant to the act of August 5, 1955, of documents to show forest lieu selection rights is simply considered as evidence to meet the requirements under that act and is not a recognition by this Department of the validity of such claim and does not augment any rights of the claimant.

The repeal by the act of March 3, 1905, of acts granting the right to make forest lieu selections, did not impair certain selection rights based upon agreements between the Secretary of the Interior and the Santa Fe Pacific Railroad Company as to lands in odd-numbered sections in San Francisco Mountains Forest Reserve, and applications for selections thereunder could be considered in the absence of other objections.

Where land claimed as the basis for a forest lieu selection right has been reconveyed to the original owner prior to any selection being made, the selection right is extinguished and this Department cannot recognize any such selection rights alleged by a purported agent or transferee of the owner, as forest lieu selection rights are not assignable.

Richard M. Lade, As Attorney In Fact For Santa Fe Pacific Railroad Company, A-29121 (Jan. 10, 1963)

SCRIP--Continued

SPECIAL TYPES OF SCRIP

Where land claimed as the basis for a forest lieu selection right has been reconveyed to the original owner prior to any selection being made, the selection right is extinguished and this Department cannot recognize any such selection rights alleged by a purported agent or transferee of the owner, as forest lieu selection rights are not assignable.

Battle Mountain Company, As Attorney In Fact For Santa Fe Pacific Railroad Company, A-29146 (Jan. 31, 1963)

Selections in satisfaction of Valentine scrip rights of lands within the area of a Bureau of Land Management forest management program which contain valuable commercial timber and are a vital and integral part of the Bureau's sustained yield forest management program are properly rejected because disposal of the lands would be detrimental to the sustained yield management program.

Carl E. Forsberg, Casper Joseph Schmand, A-29158, A-29159 (Aug. 19, 1963)

An application to select in lieu of land relinquished under the acts of July 1, 1898, and February 27, 1917, lands within the area of a Bureau of Land Management forest management program which contain valuable commercial timber and are a vital and integral part of the Bureau's sustained yield forest management program is properly rejected because disposal of the land would be detrimental to the sustained yield program.

Casper Joseph Schmand, Attorney In Fact for Mike Swab, A-29451 (Aug. 19, 1963)

Lands located in satisfaction of McKee scrip which have been withdrawn by Executive Order 6910 are subject to classification under section 7 of the Taylor Grazing Act before the location can be approved.

A location in satisfaction of McKee scrip rights for lands within the area of a Bureau of Land Management forest management program which contain valuable commercial timber and are a vital and integral part of the Bureau's sustained yield forest management program is properly rejected because disposal of the lands would be detrimental to the sustained yield program.

Any statements made by Bureau of Land Management employees that certain lands may be available and suitable for scrip location do not bind this Department to classify the lands for that purpose and the location may be rejected if the lands

SCRIP--Continued

SPECIAL TYPES OF SCRIP--Continued

are properly classified as more valuable and suitable for retention in Federal ownership for a different purpose.

Property Management Company, A-29144 (Aug. 19, 1963)

The right to locate Sioux Half-Breed Scrip is a personal right, not subject to transfer. Such scrip may, however, be located by an attorney-in fact with authority from the scripee to locate the land in the name of the scripee.

It is proper to reject an application to locate Sioux Half-Breed scrip where the party seeking to make the selection of land has not shown that he has authority to locate the land in the name of the scripee.

Barney R. Colson, A-28617 (Sept. 16, 1963) 70 I.D. 409

SECRETARY OF THE INTERIOR

Under the Act of Aug. 9, 1955 (69 Stat. 539; 25 U.S.C., sec. 415), which authorizes the Indian owners of restricted tribally or individually owned lands to lease such lands, with the approval of the Secretary of the Interior, for a term of not to exceed twenty-five years "for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary," the phrase "specialized crops" is not one of limitation, and the Secretary is authorized to approve such leases if, in order to produce the crop or crops proposed to be grown, he determines that a substantial investment in the improvement of the land is necessary for that purpose and the lessee is required to make such an investment.

Long-Term Farming Leases of Indian Lands Under the Act of Aug. 9, 1955 (69 Stat. 539; 25 U.S.C., Sec. 415), as Amended, M-36651 (Apr. 8, 1963) 70 I.D. 119

Although the Secretary of the Interior is by Executive Order No. 10355 authorized to exercise the power of the President to withdraw and reserve

SECRETARY OF THE INTERIOR--Continued

public domain and other lands owned or controlled by the United States, including the authority to modify or revoke past or future withdrawals or reservations, such power cannot be exercised over lands in a national forest without the approval or concurrence of the Secretary of Agriculture as required by Section 1(c) of the Executive Order.

Validity of Lease No. 14-20-600-5511, October 21, 1959, Between the Bureau of Indian Affairs, Lessor, and Flagstaff Foundation for Industrial Development, Lessee, M-36659 (Sept. 23, 1963) 70 I.D. 429

Since the determination of whether to dispose of public land pursuant to the Small Tract Act is committed to the discretion of the Secretary, it is proper to reject an application for a small tract where because of complicated survey and land problems the location and extent of the area of public land is in doubt and there is no prospect that the difficulties will be soon resolved.

Jean Holton Westfeldt, A-29604 (Nov. 15, 1963)

SMALL TRACT ACT

GENERALLY

An applicant for a small tract lease on land included in a mining claim held by him is properly required to relinquish his claim as to land offered to him for lease.

An applicant for a small tract lease cannot properly be required as a condition to receiving a lease on a portion of the land applied for to remove improvements on the balance of the land applied for, which is included in a mining claim held by him, unless the claim was void from its inception or is determined to be invalid after proper proceedings or is relinquished.

John Rovetto, A-28740 (Feb. 8, 1963)

Approval of an assignment of a lease under the Small Tract Act is properly refused where the assignment is not submitted for approval to the Bureau

SMALL TRACT ACT--Continued

GENERALLY--Continued

of Land Management within 90 days of the date of execution of the assignment and the request for approval on the assignment form is signed by the assignor instead of by the assignee.

An assignment of a small tract lease will not be recognized unless and until approved by the Bureau of Land Management.

Clyde W. Smith, Loreen E. Cox, A-29191 (Feb. 28, 1963)

Where a small tract lessee who enters the military service gives notice of his entrance into military service after the six-month period in which such notice is required to be filed by departmental regulation, but he is notified that his lease has been extended by reason of his military service and in reliance thereon fails to take action necessary to renew his lease or purchase the leased land, the requirements of the regulation will be waived in the absence of any interest adverse to that of the lessee.

Kieth G. Wilson et al., A-29173 (Mar. 26, 1963)

Since the determination of whether to dispose of public land pursuant to the Small Tract Act is committed to the discretion of the Secretary, it is proper to reject an application for a small tract where because of complicated survey and land problems the location and extent of the area of public land is in doubt and there is no prospect that the difficulties will be soon resolved.

A small tract application is not to be suspended where it is decided to reject it pending the resolution of survey and other problems involving the area in which the land lies.

Jean Holton Westfeldt, A-29604 (Nov. 15, 1963)

APPLICANTS

An application for lease and sale of a small tract of public land by one who already has a patent to a small tract is properly limited to a lease of such land where no satisfactory showing is made that would warrant giving him the opportunity to buy the second tract, even though the combined acreage of the two tracts is less than the maximum acreage the Secretary is permitted to sell at one time.

Eugene G. Roguszka, A-28853 (Mar. 12, 1963)

SMALL TRACT ACT--Continued

APPLICATIONS

An application to purchase public land held by the applicant under small tract lease is properly rejected when it appears that the applicant has placed no improvements upon the leased land and has not acquired the improvements placed thereon through mistake by the lessee of an adjoining tract but such rejection should be without prejudice to land office acceptance of another application to lease or purchase filed by the applicant for the adjoining tract.

Gerald Paul Rayl, A-29116 (Mar. 26, 1963)

An application filed under the Small Tract Act for one piece of land cannot be amended to substitute an entirely different piece of land and retain the priority accorded by the filing for the first piece when the substitute land had not been classified for small tract disposal at the time the application was filed.

Nina L. Werner et al., A-29389 (Sept. 20, 1963)

An application to lease or purchase a small tract of public land pursuant to the act of June 1, 1938, as amended, is improperly rejected on the ground that the land is unsurveyed because the statute forbids only the sale of unsurveyed land and does not prohibit the leasing of unsurveyed land.

Jean Holton Westfeldt, A-29604 (Nov. 15, 1963)

An applicant for purchase of a small tract of public land acquires no right or interest in the land by the filing of his application, nor can he acquire such right because of delay in the processing of his application; he must, therefore, accept the allowance of his application for a tract of such acreage as classification has determined to be proper and pay a purchase price which reflects a current appraisal of the fair market value of the land.

Leotha Marie Stone et al., A-29470 (Nov. 15, 1963)

CLASSIFICATION

Land which is properly classified for retention in Federal ownership may not be disposed of under the homestead law, the public sale law, or the small tract act.

Bert Leander Sargent et al., A-28809, A-29284 (Jan. 30, 1963)

SMALL TRACT ACT--Continued

CLASSIFICATION--Continued

A small tract application is properly rejected as to land which is chiefly valuable for public recreational purposes.

John Rovetto, A-28740 (Feb. 8, 1963)

A classification of lands as unsuitable for small tract purposes because of rough and unsuitable topography will not be disturbed in the absence of positive and substantial evidence that it is erroneous.

Peter J. Ernzer, A-28924a (Mar. 18, 1963)

Where small tract applications have been rejected because of an adverse classification but the record does not clearly show whether or not the classification was proper, the cases will be remanded to the Bureau of Land Management for reconsideration and clarification of the record.

Charles J. Hawkins et al., A-28924 (Mar. 18, 1963)

Land that is classified as chiefly valuable for public recreational purposes is not subject to lease under the Small Tract Act even on an interim basis pending public use of the land.

Otis W. Anderson, A-28721 (Apr. 29, 1963)

A small tract application for an island near a large center of population that has been classified as primarily valuable for public recreation and properly disposable to the State under a Recreation and Public Purposes application is properly rejected.

Larry T. Olsen, A-29112 (May 28, 1963)

An application for a small tract lease is properly rejected when the Department's examination of the land discloses that it is mineral in character and more valuable for mining than for small tract uses, and the issue will not be reexamined on appeal when the applicant does not attempt to disprove the departmental finding.

Nina L. Werner et al., A-29389 (Sept. 20, 1963)

SMALL TRACT ACT--Continued

CLASSIFICATION--Continued

An applicant for purchase of a small tract of public land acquires no right or interest in the land by the filing of his application, nor can he acquire such right because of delay in the processing of his application; he must, therefore, accept the allowance of his application for a tract of such acreage as classification has determined to be proper and pay a purchase price which reflects a current appraisal of the fair market value of the land.

Leotha Marie Stone et al., A-29470 (Nov. 15, 1963)

LANDS SUBJECT TO

A mining claim cannot be validly located pursuant to the Mining Claims Rights Restoration Act of 1955 on land in the category described in the third proviso of section 2 of that act.

A small tract application is properly rejected as to land included in a power site reserve at the time when the application is filed.

John Rovetto, A-28740 (Feb. 8, 1963)

A small tract application is properly rejected when the land applied for is included in a materials site held by a State agency at the time the application is filed even though the materials site is thereafter relinquished.

Cecil R. Kearns, A-29333 (June 10, 1963)

Land withdrawn from appropriation by Executive order is not subject to disposition under the Small Tract Act, and applications filed for such land are properly rejected, even though subsequently the order is revoked and the land is opened to the operation of the public land laws.

George D. Jackson, Margaret Jane Hartman, A-29509 (July 26, 1963)

An application to lease or purchase a small tract of public land pursuant to the act of June 1, 1938, as amended, is improperly rejected on the ground that the land is unsurveyed because the statute forbids only the sale of unsurveyed land and does not prohibit the leasing of unsurveyed land.

Jean Holton Westfeldt, A-29604 (Nov. 15, 1963)

SMALL TRACT ACT--Continued

LANDS SUBJECT TO--Continued

Public land in Alaska which has been withdrawn from settlement, location, sale, and entry and reserved for classification, subject to valid existing rights, is not available for lease or sale under the Small Tract Act, even to an applicant who alleges he built a cabin on a tract of land prior to its withdrawal, since no rights can be acquired under the Small Tract Act by building improvements or occupying the land prior to any authorization to do so; however, a valid claim under any of the appropriate settlement acts in Alaska initiated prior to the withdrawal would not be affected by it.

Robert Hoopes, A-29676 (Nov. 13, 1963)

PREFERENCE RIGHTS

Small tract applications filed for lands subsequent to their classification for disposition under the Small Tract Act are not entitled to preference rights.

Small tract applications filed by veterans are not entitled to veterans preference rights except as to unexpired preferences granted by orders issued prior to Sept. 27, 1959.

Ralph T. Martinez, Jr., Albert T. Martinez, A-29207 (May 28, 1963)

RENEWAL OF LEASE

A small tract lease will not be renewed where there is no showing that nonrenewal would work an extreme hardship on the lessee.

Richard P. Evans, A-29193 (Feb. 5, 1963)

An application for renewal of a small tract lease or purchase of the leased land will be rejected when statements certified to therein are false.

An application for renewal of a small tract lease will be rejected when there is no showing that failure to renew will work an extreme hardship on the lessee.

Clyde W. Smith, Loreen E. Cox, A-29191 (Feb. 28, 1963)

SMALL TRACT ACT--Continued

RENEWAL OF LEASE--Continued

A small tract lease issued on a lease-only basis for residential purposes may not be renewed where the lessee failed to construct satisfactory improvements appropriate to the type of use for which the lease had issued, such as a presentable dwelling suitable for year-round or seasonable use for residential purposes.

John M. McCarvel, A-29437 (July 19, 1963)

A small tract lease for land classified for lease and sale will not be renewed where improvements have not been constructed on the land during the term of the original lease and one renewal, the only reason given for failure to construct the necessary improvements is financial inability, and the lease is otherwise subject to cancellation for violation of the terms of the lease as to the use to which the leased land may be devoted.

Edgar Freeland, A-29449 (July 24, 1963)

A small tract lease for land classified for lease and sale will not be renewed where improvements have not been constructed on the land during the term of the lease and the lessee has not shown that the failure to construct improvements is justified under the circumstances or that nonrenewal of the lease would work an extreme hardship on him.

Patrick J. Kissane, A-29746 (Sept. 11, 1963)

An application for renewal of a small tract lease is properly rejected when it appears that the leased land has been classified for lease and sale and there is no satisfactory showing that failure to meet the requirements for sale of the tract is justified and that nonrenewal of the lease would cause extreme hardship to the lessee.

Alexander N. Scott, A-29659 (Sept. 13, 1963)

SMALL TRACT ACT--Continued

RENEWAL OF LEASE--Continued

An application for the renewal of a small tract lease which is filed after expiration of the applicant's lease is properly rejected.

Robert L. Birch, A-29559 (Sept. 25, 1963)

A small tract lessee is not entitled to renewal of his lease where he has not shown that nonrenewal of the lease would work an extreme hardship on him.

Ezra L. Dustin, A-29612 (Oct. 15, 1963)

A small tract lessee will be given the opportunity to present further evidence to show that nonrenewal of the lease would work an extreme hardship on him where his allegations of expenditure on lease improvements would seem to warrant such a conclusion but his evidence in support of the allegations is deficient.

Velma L. Smith, A-29589 (Oct. 15, 1963)

Although a change in the circumstances of a lessee's employment may have made it more desirable for him and his wife not to construct the required improvements on a tract leased to them under the Small Tract Act during the term of the lease and an extension of the lease, a renewal will not be granted where there appears no reason to justify it since very little work was done during the extended term of the lease even though the land office had informed the lessees that every attempt should be made to complete the improvements during that time, and there are no new circumstances shown which would have prevented completion of the work.

Clyde and Selma Long, A-29719 (Nov. 5, 1963)

A small tract lessee is not entitled to a renewal of his lease where he has failed to construct any improvements on the leased land and to show that there is justifiable basis for the failure to do so and that nonrenewal of the lease will work an extreme hardship on him.

Joe B. Barker, A-29842 (Nov. 13, 1963)

SMALL TRACT ACT--Continued

SALES

An application to purchase public land held under small tract lease is properly rejected when it appears that the applicant had not constructed satisfactorily the improvements which are required to qualify his application within the period of the lease.

Where under a departmental policy a small tract could have been sold to its lessee without the construction of improvements and the lessee has made extensive and continuous attempts to comply with the changing and increasingly stringent requirements of the county building code, and his lease has been involved in extensive proceedings within the Department, he is to be offered an opportunity to purchase the tract without the construction of improvements at the current market value of the unimproved land.

Rudolf James Geisler, A-29117 (Jan. 10, 1963)

An application to purchase public land held under a small tract lease is properly rejected when it appears that the applicant has not constructed the improvements required to qualify his application within the period of the lease and an extension granted at his request for additional time to meet the construction requirements.

Richard P. Evans., A-29193 (Feb. 5, 1963)

An application for renewal of a small tract lease or purchase of the leased land will be rejected when statements certified to therein are false.

Clyde W. Smith, Loreen E. Cox, A-29191 (Feb. 28, 1963)

An application for lease and sale of a small tract of public land by one who already has a patent to a small tract is properly limited to a lease of such land where no satisfactory showing is made that would warrant giving him the opportunity to buy the second tract, even though the combined acreage of the two tracts is less than the maximum acreage the Secretary is permitted to sell at one time.

Eugene G. Roguszka, A-28853 (Mar. 12, 1963)

SMALL TRACT ACT--Continued

SALES--Continued

An application to purchase public land held by the applicant under small tract lease is properly rejected when it appears that the applicant has placed no improvements upon the leased land and has not acquired the improvements placed thereon through mistake by the lessee of an adjoining tract but such rejection should be without prejudice to land office acceptance of another application to lease or purchase filed by the applicant for the adjoining tract.

Gerald Paul Rayl, A-29116 (Mar. 26, 1963)

Where a departmental regulation provides that lands may be classified for direct sale at not less than their appraised value and where the land office solicits offers to purchase lands at an appraised value from small tract lease applicants at a time when the land sought is covered by a mineral patent application, appraisals made then or earlier are not binding on the Government, but the applicants are properly required to pay the value of the land as determined in appraisals made after the conflicting mining claim is disposed of.

The filing of an application to purchase a small tract which has been offered directly for sale without lease along with the payment of purchase money is not a completed contract in the absence of acceptance by the Government.

Elizabeth Sauer Dreves et al., A-29292 (July 23, 1963)

An application to purchase filed by a small tract lessee is properly rejected when it is apparent that he has failed to meet the improvement standards upon which his option to purchase the leased land depended.

Yvonne W. Cassity, A-29464 (July 25, 1963)

An application to purchase a small tract classified for lease and sale as a residence site is properly rejected where the lessee has failed to erect any of the required improvements on the land.

Vernon R. Moore, A-29788 (Aug. 27, 1963)

SMALL TRACT ACT--Continued

SALES--Continued

An applicant for purchase of a small tract of public land acquires no right or interest in the land by the filing of his application, nor can he acquire such right because of delay in the processing of his application; he must, therefore, accept the allowance of his application for a tract of such acreage as classification has determined to be proper and pay a purchase price which reflects a current appraisal of the fair market value of the land.

An order merely opening lands to small tract disposal is not an offer to lease or sell the lands and cannot be acted upon in such a manner as to create a contractual obligation nor does it limit the authority of the Department, at any time before completion of a sale, to inquire into and, if necessary, change the appraisal price to accomplish the purpose of the regulatory requirement that land shall not be sold at less than its appraised price when offered for direct sale unde under the Small Tract Act.

Leotha Marie Stone et al., A-29470 (Nov. 15, 1963)

SOLDIERS' ADDITIONAL HOMESTEADS

GENERALLY

A soldier's additional homestead right will be recognized only if the record shows that the statutory conditions have been met with respect to the holding of a homestead entry during the prescribed period of time by a person who had the required military service; and, where the record reveals substantial reason to doubt that the purported entryman and soldier were the same person, an application to satisfy the alleged additional homestead right will not be accepted.

Eugene Symons Eldridge, A-29352 (Nov. 4, 1963)

Where all the documents relating to a partial assignment of a soldiers' additional homestead right have been presented timely to the Director, Bureau of Land Management, by a land office in connection with applications seeking to exercise part of the right assigned and the right is found

SOLDIERS' ADDITIONAL HOMESTEADS
--Continued

GENERALLY--Continued

valid to the extent asked, the balance of the right is not to be denied validity several years later on the ground that the assignee had not presented it for recordation within the period prescribed by the statute and regulations.

Jack V. Walker, A-29804 (Dec. 31, 1963)
70 I. D. 535

SOLICITOR, DEPARTMENT OF THE INTERIOR

Since Field Solicitors do not have authority to determine either Reclamation or Indian irrigation claims under the annual Public Works Appropriation Acts, claims which may involve administrative determinations under both the Federal Tort Claims Act and under annual Public Works Appropriation Acts should be referred to the appropriate Regional Solicitors. They have full authority concerning both types of claims. The purpose of this holding is to prevent the fragmentary consideration of claims.

Claim of John C. Brock, TA-249 (Ir.) (Oct. 25, 1963) 70 I. D. 463

STATE EXCHANGES

EQUAL VALUES

Where land offered by a State in exchange for public land, pursuant to section 8 of the Taylor Grazing Act, as amended, has been used by the Department of the Navy for several years under leaseholds acquired through condemnation proceedings and the Navy's usage has depressed the value of the State's land, the value of the land for the purpose of determining whether the offered and selected lands are of equal value is

STATE EXCHANGES--Continued

EQUAL VALUES--Continued

to be the amount that would have to be paid for the land by the United States in proceedings brought to condemn the fee.

State of California, A-29009 (June 26, 1963)
70 I. D. 234

STATE LANDS

The rights acquired by the United States in the public domain are determined by the common law. Under the common law, as interpreted and applied by the Supreme Court, the United States, wherever it is a littoral or riparian proprietor of public domain, has a vested right to future accretions and relictions. Because of the nature of the Federal system, and by virtue of an express provision of the Constitution, no State can, by legislation or otherwise, deprive the United States of its right to relictions or accretions.

State of Utah, A-29043 (Feb. 18, 1963)
70 I. D. 27

The fact that the United States has surveyed a line as the boundary between two existing States and closed the public land surveys on that line does not establish that line as the boundary between the States or place land in one State or the otherwhere the States have never accepted that line but have accepted as their common boundary a later different line surveyed by the United States.

Ernest M. Pellkofer, A-29832 (Aug. 29, 1963)

STATE SELECTIONS

Mere knowledge that land under lease or permit contains valuable mineral deposits does not render it in a "producible status" within the meaning of section 2276(a)(3) of the Revised Statutes (43 U.S.C., sec. 852(a)(3)).

The Meaning of the Word "Producible" as used in Section 2276 of the Revised Statutes (43 U.S.C., Sec. 852), M-36626 (Sept. 8, 1961) 70 I.D. 82
See Attorney General Opinion, 70 I.D. 65

Land in a "producible status" as that term is used in section (a)(3) of the act of Aug. 27, 1958 (72 Stat. 928, 43 U.S.C., sec. 852), includes mineral lands subject to lease or permit and which are known, at the time the application for selection is complete, to contain a valuable and accessible deposit of mineral in such quantity and of such quality as to warrant the expenditure of funds for extraction and production.

Utah Indemnity Selections, Cane Creek Potash Area, M-36645 (Dec. 17, 1962) 70 I.D. 71
See Attorney General Opinion, 70 I.D. 65
"To the Contrary."

A decision denying a State application to select public land as indemnity for granted school land lost to it will be remanded for further consideration of the mineral character of the land when, on appeal to the Secretary of the Interior, the State presents evidence tending to show that the selected lands are nonmineral.

State of California, A-29002 (Feb. 5, 1963)

Where title to a certain lot revested in the United States upon the revocation in 1856, with the consent of the parties concerned, of approval of a State school selection made under the act of May 20, 1826, rescission of the revocation is properly denied where it is requested by persons claiming to have acquired title to the lot in 1938 but who show no reasons for disturbing the action taken over 100 years earlier.

Heirs of Joseph A. Troxclair et al., A-29194 (Mar. 1, 1963)

STATUTORY CONSTRUCTION

GENERALLY

Notwithstanding the requirements of the Colorado Storage Project Act for the protection of the national parks and monuments, the Congress, in enacting the Public Works Appropriation Acts for 1961, 1962, and 1963, manifested the intention that construction and initiation of storage behind Glen Canyon Dam should proceed on schedule without constructing proposed works for the protection of Rainbow Bridge National Monument, and therefore the Secretary would not be warranted in deferring closure of the water diversion tunnels at Glen Canyon Dam.

Congress may supersede or suspend the provisions of a basic act by an appropriation act provision which is in the form of a limitation on the availability of funds, and inquiry must be had to the legislative history of any such appropriation act provision to determine the intentions of Congress in this regard.

Closure At Glen Canyon Dam, M-36653 (Mar. 18, 1963) 70 I.D. 200

The act of May 11, 1938, repealed only those parts of the act of Mar. 3, 1927, which were inconsistent therewith, and did not affect the authority established in the earlier act to lease, for oil and gas development, lands withdrawn by Executive order for Indian purposes or for the use and occupancy of Indians.

Oil and Gas Leasing on Lands Withdrawn by Executive Order for Indian Purposes in Alaska, M-36652 (May 14, 1963) 70 I.D. 166

LEGISLATIVE HISTORY

Where Congress specifically prohibited the construction of works for the protection of Rainbow Bridge National Monument with funds appropriated for fiscal years 1961, 1962, and 1963 for the construction of Glen Canyon Dam and Reservoir, the legislative history related to the appropriation acts expresses the Congressional intention to suspend those provisions of Sections 1 and 3 of the Colorado River Storage Project Act relating to the taking of protective measures to preclude impairment of the Monument and precluding the construction of any dam or reservoir within any national park or monument.

Congress may supersede or suspend the provisions of a basic act by an appropriation act provision which is in the form of a limitation on the availability of funds, and inquiry must be had to the legislative history of any such appropriation act

STATUTORY CONSTRUCTION--Continued

LEGISLATIVE HISTORY--Continued

provision to determine the intention of Congress in this regard.

Closure At Glen Canyon Dam, M-36653 (Mar. 18, 1963) 70 I. D. 200

The language and legislative history of the act of Mar. 3, 1927, together with the avowed purpose of establishing a uniform policy for leasing all Executive order reservations for Indian purposes compel the conclusion that the 1927 act is applicable to lands in Alaska.

Oil and Gas Leasing on Lands Withdrawn by Executive Order for Indian Purposes in Alaska, M-36652 (May 14, 1963) 70 I. D. 166

Where the language of an Act is silent on the question of interest, resort must be had to the legislative history of the applicable statute.

Payment of Interest on the Capital Cost of the National Fisheries Center and Aquarium, M-36663 (Dec. 9, 1963) 70 I. D. 514

SUBMERGED LANDS ACT

GENERALLY

Section 6(m) of the Alaska Statehood Act provided that the Submerged Lands Act of 1953 was applicable to Alaska.

Since section 6(m) of the Statehood Act extended to the new State the provisions of the Submerged Lands Act, then the marine animal and plant life throughout the submerged lands, including those lands covered by the Alaska Tidelands Act, was granted to the State.

It is clear from the expressed language of section 6(m) of the Statehood Act that Congress intended the Submerged Lands Act to be applicable to

SUBMERGED LANDS ACT--Continued

GENERALLY--Continued

Alaska in the same manner and to the same extent as all other States of the Union.

Regulation of Sea Otters Within the Three-Mile Limit, M-36650 (Mar. 29, 1963) 70 I. D. 107

SURFACE RESOURCES ACT

APPLICABILITY

The Surface Resources Act is applicable to mining claims located for sand and gravel prior to July 23, 1955, but not perfected by discovery prior thereto.

United States v. Charles H. Henrikson and Oliver M. Henrikson, A-28763 (June 4, 1963) 70 I. D. 212

VERIFIED STATEMENT

A verified statement filed pursuant to section 5 of the act of July 23, 1955, asserting surface rights in mining claims which does not designate the section or sections of the public land survey which embrace most of the claims and contains only metes and bounds descriptions of such claims ties to points on the boundaries of certain sections fails to meet the statutory requirement that it "shall set forth *** [t]he section or sections" which embrace the claims and must be rejected as an incomplete statement as to such claims.

R. D. Compton, A-28927 (Jan. 31, 1963) 70 I. D. 12

A verified statement required under the act of July 23, 1955, is properly rejected and the use of the surface resources denied to a mining claimant who files such statement after the termination of the period of 150 days prescribed by the statute for such filing, notwithstanding that the statement was erroneously filed with the Forest Service within the 150-day period.

Jack Wakefield Mining Company, Inc., A-29512 (July 29, 1963)

SURFACE RESOURCES ACT--Continued

VERIFIED STATEMENT--Continued

A verified statement required under the act of July 23, 1955, is properly rejected when a mining claimant files such statement after the termination of the period of 150 days prescribed by the statute for filing, notwithstanding that illness and other factors may have prevented the filing, since the statute makes no provision for waiver of its requirement of timely filing.

Mary Martinez, A-29776 (Sept. 18, 1963)

A verified statement is properly rejected when filed in relation to mining claims previously declared null and void.

Oscar Haugen, A-29874 (Nov. 19, 1963)

SURVEYS OF PUBLIC LANDS

GENERALLY

An offer to lease acquired land for oil and gas purposes is properly rejected when in the description of the land contained in such offer, a deviation of a portion of the boundary which does not conform to the public land survey is tied to a quarter-quarter section corner and not to an established survey corner, which term includes township corners, section corners, quarter-section corners and meander corners.

Jack S. Stanley, A-29148 (Jan. 24, 1963)

Where the high-water mark of a navigable lake is not capable of being deduced from physical evidence, the lake shall be meandered along the water's edge as of the time of the survey.

State of Utah, A-29043 (Feb. 18, 1963)

70 I. D. 27

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

The location of the easterly boundary line of the area withdrawn by Public Land Order 576, which was affirmed by a departmental decision of June 27, 1960, in the case of Richard L. Oelschlaeger (A-28299), will not be disturbed in the absence of an adverse ruling by the courts

Bernard R. Martin, A-29280 (Apr. 12, 1963)

The fact that the United States has surveyed a line as the boundary between two existing States and closed the public land surveys on that line does not establish that line as the boundary between the States or place land in one State or the other where the States have never accepted that line but have accepted as their common boundary a later different line surveyed by the United States.

Ernest M. Pellkofer, A-29832 (Aug. 29, 1963)

SWAMPLANDS

When field notes of a survey submitted by a State to show the swampy character of land selected under the act granting swamplands to the States show only the low or swampy character of other subdivisions in the area of the selected land, and that the bearing trees marking the boundaries of the selected land are kinds that are associated with uplands, with no indication of the nature of the selected land, the application is properly rejected because of the State's failure to sustain the burden of proving that the selected land falls within the terms of the grant.

State of Louisiana, A-29124 (Jan. 14, 1963)

TAYLOR GRAZING ACT

CLASSIFICATION

Selections in satisfaction of Valentine scrip rights of lands within the area of a Bureau of Land Management forest management program which contain valuable commercial timber and are a vital and integral part of the Bureau's sustained yield forest management program are properly rejected because disposal of the lands would be detrimental to the sustained yield management program.

Carl E. Forsberg, Casper Joseph Schmand, A-29158, A-29159 (Aug. 19, 1963)

An application to select in lieu of land relinquished under the acts of July 1, 1898, and February 27, 1917, lands within the area of a Bureau of Land Management forest management program which contain valuable commercial timber and are a vital and integral part of the Bureau's sustained yield forest management program is properly rejected because disposal of the land would be detrimental to the sustained yield program.

Casper Joseph Schmand, Attorney In Fact for Mike Swab, A-29451 (Aug. 19, 1963)

Lands located in satisfaction of McKee scrip which have been withdrawn by E. O. No. 6910 are subject to classification under section 7 of the Taylor Grazing Act before the location can be approved.

A location in satisfaction of McKee scrip rights for lands within the area of a Bureau of Land Management forest management program which contain valuable commercial timber and are a vital and integral part of the Bureau's sustained yield forest management program is properly rejected because disposal of the lands would be detrimenta to the sustained yield program.

Any statements made by Bureau of Land Management employees that certain lands may be available and suitable for scrip location do not bind this Department to classify the lands for that purpose and the location may be rejected if the lands are properly classified as more valuable and suitable for retention in Federal ownership for a different purpose.

Property Management Company, A-29144 (Aug. 19, 1963)

A classification of land may be revoked or modified at any time before rights have been initiated in the land if the classification appears to be in error.

Keith J. Davis et al., A-29274 (Oct. 15, 1963)

TIMBER SALES AND DISPOSALS

A partnership is properly required to post a bond in the sum of unsettled trespass liability incurred by closely tied corporations which will directly benefit from a timber sale to the partnership as a condition precedent to the execution by the United States of a timber sales contract to the partnership.

Magnolia Lumber Sales Company, A-29575 (Oct. 8, 1963) 70 I. D. 449

TORTS

GENERALLY

An accident cannot be considered an act of God simply because it is raining when the accident occurs. If the rainfall is ordinary, the accident cannot be considered an act of God.

Claim of Maude S. Vincent, T-1178 (July 11, 1963) 70 I. D. 354

AMOUNT OF DAMAGES

The common law rule that the expenses of litigating a tort claim are not recoverable as damages is followed in California, and applies to the expenses of prosecuting a claim administratively under the Federal Tort Claims Act. Under this rule, the charge made by a physician for the preparation of a medical report to be used in establishing the nature or extent of an alleged injury, rather than to assist in its treatment, is not a proper element of damages.

Under the law of California, the trier of the facts is accorded a wide latitude and an elastic discretion in determining the amount of compensation to be awarded as general damages for pain and suffering, temporary disability, and the like. The only standard is that the amount awarded must be such as a reasonable person would consider fair compensation.

Claim of Mr. Y. G. Sanchez, TA-258 (Dec. 2, 1963) 70 I. D. 509

TORTS--Continued

ANIMALS AND LIVESTOCK

The United States, considered as a private person under the Federal Tort Claims Act, does not have any ownership, control or possession of a deer on a public highway. The United States is not liable under the Federal Tort Claims Act for damage done to a private motor vehicle by a deer on a public highway, since no negligence can be attributed to Government employees in connection with such incident.

Claim of Donald Douglas Andrews, T-1212 (July 23, 1963

Under the laws of Montana, before a landowner can recover for damages caused by trespassing animals he is required to fence them out. This does not charge the landowner with the duty to keep animals lawfully at large from coming on his land, or make their entry rightful, so as to make him liable for injuries to such animals caused by the existence of dangerous agencies on the land, not wantonly or intentionally caused. Livestock wander at their own and their owner's risk of loss.

Claim of John C. Brock, TA-249 (Ir.) (Aug. 12, 1963) 70 I. D. 397

FLOODING

A claim for property damage and loss on account of an alleged wrongful diversion of flood waters by the Government is not allowable, irrespective of whether the flood and the storm that caused it were sufficiently extraordinary to amount to an Act of God, where the evidence shows that such damage and loss would have been caused by the flood waters even if no diversionary measures, whether temporary or permanent, had been taken by the Government.

Claim of Ole Hendricks, TA-262 (Dec. 16, 1963)

LICENSEES AND INVITEES

In accordance with Wyoming law, a visitor to Yellowstone National Park is held to be an invitee. The duty owed to the visitor by the Government is to use ordinary and reasonable care to keep the premises reasonably safe for his visit and to warn him of any hidden danger. The Government is not an insurer of the safety of the visitor.

Claim of Mrs. Hannah Cohen, TA-247 (May 22, 1963) 70 I. D. 188

TORTS--Continued

LICENSEES AND INVITEES--Continued

In accordance with District of Columbia law, a visitor to a national memorial is a licensee by invitation. The duty owed to the visitor by the Government is to use reasonable and ordinary care and to provide reasonably safe premises, and to protect or warn the visitor against any danger known to the Government which a careful visitor might not discover.

The duty owed by the Government to a visitor to a national memorial in the District of Columbia includes the duty to provide adequate lighting in order that the visitor may observe any part of the premises and any condition of the premises which may endanger the visitor.

Claim of Maude S. Vincent, T-1178 (July 11, 1963) 70 I. D. 354

A child who while visiting a National Park Service area in Maryland enters a building which, because of conditions such as the darkness and dilapidation of its interior, a child of his age would realize was a place that visitors were not supposed to enter is not an invitee while inside the building, but is merely a licensee or trespasser to whom, under Maryland law, no duty is owed by the proprietor except that of avoiding wilful injury or entrapment.

A child who while visiting a National Park Service area in Maryland falls through an unguarded opening in the floor of a building, where the child has only the status of a licensee or trespasser, where conditions such as darkness and dilapidation exist to a degree that a child of his age would recognize as a warning of the possible presence of concealed hazards, and where the opening would have been visible to the child if he had used a flashlight or lantern, is not entitled to recover damages for the fall, since the "attractive nuisance" doctrine is not followed in Maryland, and since the concept of "entrapment" is narrowly applied in that State.

Claim of Richard M. Stevenson, T-1225 (Oct. 22, 1963) 70 I. D. 457

MOTOR VEHICLES

Skidding on an icy street or road does not, as a matter of law, establish that the driver of the skidding motor vehicle was guilty of a negligent or wrongful act or omission in the operation of the vehicle. However, the skidding may be

TORTS--Continued

MOTOR VEHICLES--Continued

caused or accompanied by negligence upon which liability may be predicated.

If either party can avoid an accident by the exercise of proper care, the accident cannot be said to be unavoidable. The issue of unavoidable accident arises only when the evidence shows that the accident happened from an unknown or unforeseen cause or in an unexplainable manner, which circumstances rebut any alleged negligence.

Claim of Michael J. Dolan, Jr., T-1176 (June 3, 1963) 70 I. D. 208

The operator of a motor vehicle is liable for damage or injury resulting from the casting of stones from the surface of the highway by such vehicle only when the damage or injury was caused by the negligent or wrongful operation of the vehicle.

Claim of Ralph Morden Wilder, T-1230 (Oct. 3, 1963) 70 I. D. 448

PARKS

In accordance with Wyoming law, a visitor to Yellowstone National Park is held to be an invitee. The duty owed to the visitor by the Government is to use ordinary and reasonable care to keep the premises reasonably safe for his visit and to warn him of any hidden danger. The Government is not an insurer of the safety of the visitor.

The mere fact that loose stones or gravel are present on an outdoor walk in a national park, and cause a visitor to the park to fall, does not establish either that the walk is dangerous per se, or that the walk is maintained in a negligent manner. In the absence of facts showing that the Government employees had a reasonable opportunity to discover the presence of the stones or gravel on the walk, and to remove them, no negligent or wrongful act can be imputed to the Government employees.

Claim of Mrs. Hannah Cohen, TA-247 (May 22, 1963) 70 I. D. 188

A child who while visiting a National Park Service area in Maryland enters a building which, because of conditions such as the darkness and

TORTS--Continued

PARKS--Continued

dilapidation of its interior, a child of his age would realize was a place that visitors were not supposed to enter is not an invitee while inside the building, but is merely a licensee or trespasser to whom, under Maryland law, no duty is owed by the proprietor except that of avoiding wilfull injury or entrapment.

A child who while visiting a National Park Service area in Maryland falls through an unguarded opening in the floor of a building, where the child has only the status of a licensee or trespasser, where conditions such as darkness and dilapidation exist to a degree that a child of his age would recognize as a warning of the possible presence of concealed hazards, and where the opening would have been visible to the child if he had used a flashlight or lantern, is not entitled to recover damages for the fall, since the "attractive nuisance" doctrine is not followed in Maryland, and since the concept of "entrapment" is narrowly applied in that State.

Claim of Richard M. Stevenson, T-1225 (Oct. 22, 1963) 70 I. D. 457

TRESPASS

An assessment of damages made by the Bureau of Land Management for a timber trespass will not be disturbed when the trespasser does not present substantial evidence that the determination is incorrect.

Hub Lumber Company, A-29527 (Sept. 17, 1963)

A child who while visiting a National Park Service area in Maryland enters a building which, because of conditions such as the darkness and dilapidation of its interior, a child of his age would realize was a place that visitors were not supposed to enter is not an invitee while inside the building, but is merely a licensee or trespasser to whom, under Maryland law, no duty is owed by the proprietor except that of avoiding wilful injury or entrapment.

A child who while visiting a National Park Service area in Maryland falls through an unguarded opening in the floor of a building, where the child has only the status of a licensee or trespasser, where conditions such as darkness and dilapidation exist to a degree that a child of his age would recognize as a warning of the possible presence of concealed hazards, and where the opening would have been visible to the child if he had used a flashlight or lantern, is not entitled to recover damages for the fall, since the "attractive nuisance" doctrine is not followed in Maryland, and

TORTS--Continued

TRESPASS--Continued

since the concept of "entrapment" is narrowly applied in that State.

Claim of Richard M. Stevenson, T-1225 (Oct. 22, 1963) 70 I.D.457

TRESPASS

GENERALLY

A partnership is properly required to post a bond in the sum of unsettled trespass liability incurred by closely tied corporations which will directly benefit from a timber sale to the partnership as a condition precedent to the execution by the United States of a timber sales contract to the partnership.

Magnolia Lumber Sales Company, A-29575 (Oct. 8, 1963) 70 I.D. 448

MEASURE OF DAMAGES

Where there has been an innocent trespass in the mining and removing of coal belonging to the United States in a State which fixes the measure of damages as the amount which will compensate for all the detriment proximately caused thereby, it is proper to call upon the trespasser for the value of the coal in place and not merely the royalty that would have been derived by the United States for the coal mined had the coal been mined under a lease issued to the trespasser.

Knife River Coal Mining Company, A-28953 (Jan. 31, 1963) 70 I.D. 16

An assessment of damages made by the Bureau of Land Management for a timber trespass will not be disturbed when the trespasser does not present substantial evidence that the determination is incorrect.

Hub Lumber Company, A-29527 (Sept. 17, 1963)

VETERANS PREFERENCE

Small tract applications filed by veterans are not entitled to veterans preference rights except as to unexpired preferences granted by orders issued prior to Sept. 27, 1959.

Ralph T. Martinez, Jr., Albert T. Martinez, A-29207 (May 28, 1963)

WITHDRAWALS AND RESERVATIONS

GENERALLY

The location of the easterly boundary line of the area withdrawn by Public Land Order 576, which was affirmed by a departmental decision of June 27, 1960, in the case of Richard L. Oelschlaeger (A-28299), will not be disturbed in the absence of an adverse ruling by the courts.

Bernard R. Martin, A-29280 (Apr. 12, 1963)

Although a departmental regulation precludes the acceptance of oil and gas offers to lease lands within wildlife refuges and by departmental order certain lands within existing oil and gas leases are made a part of a refuge, applications for the five-year extension of such leases should not be rejected on the ground that such lands have been withdrawn, when none of the action taken by the Department with respect to the lands purports to be a withdrawal of such lands from the operation of the Mineral Leasing Acts.

Paul Gordon Amerada Petroleum Corporation, A-29332 (May 2, 1963) 70 I.D. 225

Lands in Alaska which have been withdrawn by Executive order for Indian purposes or for the use and occupancy of any Indians or tribe, may be leased for oil and gas development pursuant to the act of Mar. 3, 1927.

Lands in the Tyonek Reserve (Moquawkie Reservation) in Alaska which were "* * * withdrawn from disposal, and reserved for the U.S. Bureau of Education * * *" by Executive Order No. 2141, Feb. 27, 1915, were "* * * withdrawn for Indian purposes or for the use and occupancy of

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

* * * Indians * * *" within the meaning of the act of Mar. 3, 1927.

Oil and Gas Leasing on Lands Withdrawn by Executive Order for Indian Purposes in Alaska, M-36652 (May 14, 1963) 70 I.D. 167

Where lands have been withdrawn for the use of the Army and the use is inconsistent with usage of the land for grazing purposes, grazing permits are properly canceled as to lands within the withdrawal; the fact that the Army had instituted condemnation proceedings involving such lands does not necessarily preclude this Department from canceling the permits.

Grazing permits are licenses which may be revoked by this Department without giving rise to any right of compensation to the permittees; however, if the cancellation resulted because the lands were withdrawn for war or national defense purposes for the Army, the question as to whether the permittees are entitled to any compensation in addition to what may have been received already from the Army under the act of July 9, 1942, as amended, must rest with the Army as it is not a question which properly concerns this Department.

H. D. Mollohan and Eagle Tail Ranch, A-29335 (July 8, 1963)

Although the Secretary of the Interior is by Executive Order No. 10355 authorized to exercise the power of the President to withdraw and reserve public domain and other lands owned or controlled by the United States, including the authority to modify or revoke past or future withdrawals or reservations, such power cannot be exercised over lands in a national forest without the approval or concurrence of the Secretary of Agriculture as required by Section 1(c) of the Executive Order.

Validity of Lease No. 14-20-600-5511, October 21, 1959, Between the Bureau of Indian Affairs, Lessor, and Flagstaff Foundation for Industrial Development, Lessee, M-36659 (Sept. 23, 1963) 70 I.D. 429

AUTHORITY TO MAKE

The fact that one is occupying public land and diligently working toward making discovery gives him certain possessory rights but not as against the United States, and the land that he is occupying may be withdrawn from location under the mining law so as to invalidate any mining claim on which a discovery is made after such withdrawal.

Ernest Smith, A-29590 (Aug. 2, 1963)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF

If a valid color of title is created before the withdrawal of the lands involved, the withdrawal does not preclude the perfecting of the claim under the Color of Title Act.

Clement Vincent Tillion, Jr., A-29277 (Apr. 12, 1963)

Where lands have been withdrawn for the use of the Army and the use is inconsistent with usage of the land for grazing purposes, grazing permits are properly canceled as to lands within the withdrawal; the fact that the Army had instituted condemnation proceedings involving such lands does not necessarily preclude this Department from canceling the permits.

Grazing permits are licenses which may be revoked by this Department without giving rise to any right of compensation to the permittees; however, if the cancellation resulted because the lands were withdrawn for war or national defense purposes for the Army, the question as to whether the permittees are entitled to any compensation in addition to what may have been received already from the Army under the act of July 9, 1942, as amended, must rest with the Army as it is not a question which properly concerns this Department.

H. D. Mollohan and Eagle Tail Ranch, A-29335 (July 8, 1963)

Public land in Alaska which has been withdrawn from settlement, location, sale, and entry and reserved for classification, subject to valid existing rights, is not available for lease or sale under the Small Tract Act, even to an applicant who alleges he built a cabin on a tract of land prior to its withdrawal, since no rights can be acquired under the Small Tract Act by building improvements or occupying the land prior to any authorization to do so; however, a valid claim under any of the appropriate settlement acts in Alaska initiated prior to the withdrawal would not be affected by it.

Robert Hoopes, A-29676 (Nov. 13, 1963)

POWER SITES

Prior to passage of the act of Aug. 11, 1955, lands embraced in an existing powersite withdrawal were not open to mining location, and a mining claim located subsequent to a withdrawal of the land for powersite purposes, but prior to passage of the act, is null and void where the land embraced in the claim had not been restored to en-

WITHDRAWALS AND RESERVATIONS--Continued

POWER SITES--Continued

try under section 24 of the Federal Power Act at the time of location.

Grant Green, A-29771 (Sept. 18, 1963)

RECLAMATION WITHDRAWAL

Mining claims located on lands within a first-form reclamation withdrawal which were not open to mineral entry are properly declared null and void ab initio.

J. Everett Nelson, A-29174 (Feb. 4, 1963)

Land within a reclamation withdrawal, even though within an irrigation district and designated under the Smith Act (act of August 11, 1916), is not subject to entry under the Desert Land Act.

Vera Belle Grover Holmes, A-29218 (Mar. 1, 1963)

Public land subject to reclamation withdrawal cannot be sold at public sale and a sale application filed while the withdrawal remains in force is properly rejected.

Gino Martini, A-29467 (July 25, 1963)

A mining claim located on land subject to a first form reclamation withdrawal initiates no rights in the locator and is void from its purported inception.

LeRoy Otis Nauman, Leola Fern Nauman, A-29673 (Sept. 20, 1963)

An application for the restoration to mineral location and entry of public land withdrawn for reclamation purposes is properly rejected when the Bureau of Reclamation has recommended against such action.

Walker Engineering Corporation, A-29833 (Nov. 26, 1963)

WITHDRAWALS AND RESERVATIONS--Continued

REVOCATION AND RESERVATIONS

Where land is restored to disposition under the public land laws under an order which provides that applications for such lands may be filed "beginning on the date of this order" and that applications filed by non-preference-right applicants prior to a specified date would be considered as simultaneously filed as of that date, an application filed previous to that date should not be rejected as prematurely filed.

John Rovetto, A-28740 (Feb. 8, 1963)

The Secretary of the Interior can revoke or modify a withdrawal of land under the administrative jurisdiction of another agency but only with the prior approval or concurrence of the head of that agency or his delegate.

California Alluvial Mining Corporation, A-29806 (Nov. 13, 1963)

An application for the restoration to mineral location and entry of public land withdrawn for reclamation purposes is properly rejected when the Bureau of Reclamation has recommended against such action.

Walker Engineering Corporation, A-29833 (Nov. 26, 1963)

WORDS AND PHRASES

Mere knowledge that land under lease or permit contains valuable mineral deposits does not render it in a "producible status" within the meaning of section 2276(a)(3) of the Revised Statutes (43 U.S.C., sec. 852(a)(3)).

The Meaning of the Word "Producible" as used in Section 2276 of the Revised Statutes (43 U.S.C., Section 852), M-36626 (Sept. 8, 1961) 70 I.D. 82
See Attorney General Opinion, 70 I.D. 65

WORDS AND PHRASES--Continued

Land in a "producible status" as that term is used in section (a)(3) of the act of Aug. 27, 1958 (72 Stat. 928, 43 U.S.C., sec. 852), includes mineral lands subject to lease or permit and which are known, at the time the application for selection is complete, to contain a valuable and accessible deposit of mineral in such quantity and of such quality as to warrant the expenditure of funds for extraction and production.

Utah Indemnity Selections, Cane Creek Potash Area, M-36645 (Dec. 17, 1962) 70 I.D. 71
See Attorney General Opinion, 70 I.D. 65 "To the Contrary."

Under the Act of Aug. 9, 1955 (69 Stat. 539; 25 U.S.C., sec. 415), which authorizes the Indian owners of restricted tribally or individually owned lands to lease such lands, with the approva of the Secretary of the Interior, for a term of not to exceed twenty-five years "for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary," the phrase "specialized crops" is not one of limitation, and the Secretary is authorized to approve such leases if, in order to produce the crop or crops proposed to be grown, he determines that a substantial investment in the improvement of the land is necessary for that purpose and the lessee is required to make such an investment.

Long-Term Farming Leases of Indian Lands Under the Act of Aug. 9, 1955 (69 Stat. 539; 25 U.S.C., Sec. 415), as Amended, M-36651 (Apr. 8, 1963) 70 I.D. 119

Reclamation. As used in the desert land law, reclamation of land is interpreted to mean conducting water in adequate supply to the land so as to render it available for distribution when needed.

George W. Wilkinson, A-29315 (May 2, 1963)

Lands in the Tyonek Reserve (Moquawkie Reservation) in Alaska which were "* * * withdrawn from disposal, and reserved for the U.S. Bureau of Education . . ." by Executive Order No. 2141 Feb. 27, 1915, were "* * * withdrawn for

WORDS AND PHRASES--Continued

Indian purposes or for the use and occupancy of * * * Indians * * *" within the meaning of the act of Mar. 3, 1927.

Oil and Gas Leasing on Lands Withdrawn by Executive Order for Indian Purposes in Alaska, M-36652 (May 14, 1963) 70 I.D. 167

Reclamation. As used in the desert land law, rec- reclamation of land is interpreted to mean conducting water in adequate supply to the land so as to render it available for irrigation when needed.

Mary Helen Conlan, A-29398 (July 23, 1963)

Copies. An oil and gas offer is not to be rejected on the ground that the requisite number of "copies" has not been filed merely because some of the copies are found to be illegible.

A. M. Culver, John F. Partridge, Jr., and Duncan Miller, A-29494, A-29522, A-29692 (Nov. 14, 1963) 70 I.D. 484

Furnished. Where a regulation requires that in cases where an attorney in fact or agent signs an assignment of an oil and gas lease there must be "furnished" evidence of his authority to sign, the word "furnished" does not mean that such evidence must "accompany" the assignment.

Charlotte E. Brown et al., A-29667 (Nov. 21, 1963) 70 I.D. 491

Reference to "costs of construction" or similar phraseology in Federal statutes do not in themselves necessarily impute an interest requirement.

Payment of Interest on the Capital Cost of the National Fisheries Center and Aquarium, M-36663 (Dec. 9, 1963) 70 I.D. 514

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